

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Oakwood Homes Corporation, et al.,

Debtors.

Chapter 11

Case No. 02-13396 (PJW)

OHC Liquidation Trust,

Plaintiff,

v.

Adv. Proc. No. 04-57060 (PJW)

Civil Action No. 07-799 (JJF)

Credit Suisse (f/k/a Credit Suisse First Boston, a Swiss banking corporation), Credit Suisse Securities (USA), LLC (f/k/a Credit Suisse First Boston LLC), Credit Suisse Holdings (USA), Inc. (f/k/a Credit Suisse First Boston, Inc.), and Credit Suisse (USA), Inc. (f/k/a Credit Suisse First Boston (U.S.A.), Inc.), the subsidiaries and affiliates of each, and Does 1 through 100,

Defendants.

**DECLARATION OF KATE Z. MACHAN IN SUPPORT OF DEFENDANTS'  
MOTION TO EXCLUDE THE EXPERT TESTIMONY OF  
ALAN C. SHAPIRO PURSUANT TO FED. R. EVID. 702**

I, Kate Z. Machan, declare as follows:

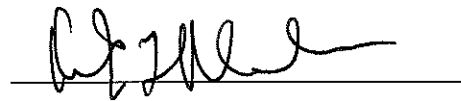
1. I am an attorney associated with the law firm of Linklaters LLP, counsel to Defendants in this action. I submit this Declaration in connection with Defendants' Motion to Exclude the Expert Testimony of Alan C. Shapiro Pursuant to Fed. R. Evid. 702.

2. Attached hereto as Exhibit A is a true and correct copy of the Report of Alan C. Shapiro, Ph.D. dated April 30, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of testimony from the deposition of Alan C. Shapiro dated September 5, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 16, 2008  
New York, New York

A handwritten signature in black ink, appearing to read 'K. Machan', is written over a horizontal line.

Kate Z. Machan, Esq.

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
OAKWOOD HOMES CORPORATION,	)	Case No. 02-13396 (PJW)
<i>et al.</i> ,	)	
	)	Jointly Administered
Debtors.	)	
_____	)	
OHC LIQUIDATION TRUST,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Proc. No. 04-57060 (PJW)
	)	
CREDIT SUISSE FIRST BOSTON, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**REPORT OF ALAN C. SHAPIRO, PH.D.**

**April 30, 2007**

**CONFIDENTIAL**

## Table of Contents

<b>I.</b>	<b>Scope of Engagement .....</b>	<b>1</b>
<b>II.</b>	<b>Credentials .....</b>	<b>1</b>
<b>III.</b>	<b>Basis for Opinions .....</b>	<b>3</b>
<b>IV.</b>	<b>Summary of Opinions .....</b>	<b>3</b>
<b>V.</b>	<b>Assumptions .....</b>	<b>4</b>
	V.A CSFB Owed Oakwood and its Creditors a Fiduciary Duty .....	4
	V.B Oakwood Was Insolvent in September 2001 .....	4
<b>VI.</b>	<b>Background .....</b>	<b>4</b>
	VI.A Manufactured Housing Industry .....	4
	VI.B Business Overview of Oakwood .....	5
	VI.C Financial Performance of the Industry Prior to 1999 .....	5
	VI.D Industry Downturn Beginning in 1999 .....	6
	VI.E Oakwood's Downturn and Bankruptcy .....	7
	VI.E.1 Oakwood's Financial Condition Was Deteriorating in 1999 and 2000 ....	7
	VI.E.2 Oakwood Continued to Report Significant Losses in 2001 .....	9
	VI.E.3 Oakwood Discontinued Its Loan Assumption Program and Reported Losses in 2002 .....	10
	VI.E.4 Oakwood Filed for Bankruptcy in November 2002 .....	11
<b>VII.</b>	<b>CSFB Did Not Behave In a Prudent Manner .....</b>	<b>12</b>
	VII.A CSFB Had Access to Public and Private Information Concerning Oakwood's Financial Condition .....	12
	VII.A.1 Investment Banks Have Unique Access to Information .....	12
	VII.A.2 Relationship between Oakwood and CSFB .....	14
	VII.A.3 CSFB Obtained Both Public and Inside Information about Oakwood's Financial Condition .....	22
	VII.B In Evaluating Its Own Exposure, CSFB Considered Oakwood a Bankruptcy Risk .....	24
	VII.B.1 Credit Memoranda Suggest Recognition of Oakwood's Financial Condition .....	24

VII.B.2 Throughout Its Relationship with Oakwood, CSFB Continued to Monitor and Insulate Itself from the Bankruptcy Risks Surrounding Oakwood .....	26
VII.C CSFB's Own Guidelines Require a High Standard of Care to its Clients .....	27
VII.D CSFB's Advice to Oakwood Was Inconsistent with Oakwood's Situation, the Information It Had, Its Own Concerns, and the Duties It Owed Oakwood and its Creditors .....	28
VII.D.1 CSFB Presentations to Oakwood Prior to August 2002 Made No Mention of the Fact that Oakwood Should Have Considered Bankruptcy .....	29
VII.D.2 CSFB's Presentation to Oakwood on August 19, 2002, Marked the First Time CSFB Discussed and Presented Potential Restructuring Alternatives .....	34
VII.E The Advice CSFB Provided to Oakwood was Inappropriate .....	35
VII.F The Actions CSFB Engaged in with Oakwood Destroyed Value and Exacerbated the Company's Insolvent Financial Condition .....	36
VII.G CSFB Should Have Advised Oakwood to Curtail Operations and Should Not Have Enabled it to Continue to Destroy Value .....	37
<b>VIII. CSFB Had a Financial Incentive to Keep Oakwood Operating .....</b>	<b>39</b>
VIII.A CSFB Stood to Continue Earning Fees for the Services It Provided to Oakwood .....	39
VIII.A.1 Fees Earned by CSFB for Underwriting Oakwood Securitizations .....	40
VIII.A.2 Fees Earned by CSFB for Providing Loan Purchase Facility to Oakwood .....	40
VIII.A.3 Fees Earned by CSFB as Oakwood's Restructuring Financial Advisor .....	41
VIII.A.4 Fees Provided CSFB with a Financial Interest in Oakwood Continuing as a Going Concern .....	41
VIII.B CSFB's Equity Interest provided it with a Financial Interest in Oakwood Continuing Operations .....	42
VIII.B.1 Agency Conflict between Equity and Debt Holders .....	42
VIII.B.2 CSFB Had a Conflict of Interest with Oakwood's Debt Holders .....	45
VIII.C Even Though CSFB was a Lender, Its Interests Differed from Those of Other Debt Holders .....	45
VIII.D Conclusion Regarding CSFB's Incentives .....	47

## **List of Tables**

Table 7.1: CSFB's Roles and Fees Earned.....	21
Table 7.2: Summary of Strategic Options Provided by CSFB .....	32
Table 8.1: Illustration of Payoffs and Probabilities of Projects .....	44

## **List of Figures**

Figure 7.1: Oakwood's Securitization Process .....	17
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## **I. Scope of Engagement**

I have been retained by Stutman, Treister & Glatt, P.C., counsel for Plaintiff Oakwood Homes Corporation Liquidation Trust (“Oakwood Liquidation Trust”), to provide an expert opinion on whether Credit Suisse First Boston (“CSFB”) performed its responsibilities in its capacity as underwriter, lender, and financial advisor to Oakwood Homes Corporation (“Oakwood”) in a reasonable or reasonably prudent manner.

This report contains my opinions on this matter, as well as the analysis and methodologies I have employed in forming my opinions. As part of my analysis, I have reviewed various materials from public sources, as well as those provided to me by counsel for Oakwood Liquidation Trust from the discovery in the litigation. The opinions and conclusions contained herein represent my current opinions and conclusions in this matter. I reserve the right to supplement or amend my opinions and conclusions in light of any new information that becomes available through discovery or other means. A list of documents on which I relied in writing this report is included in Appendix B.

## **II. Credentials**

I am the Ivadelle and Theodore Johnson Professor of Banking and Finance, and past chairman of the Department of Finance and Business Economics, Marshall School of Business, University of Southern California. I received a B.A. in Mathematics from Rice University (1967) and a Ph.D. in Economics from Carnegie Mellon University (1971). Prior to joining USC in 1978, I was an Assistant Professor at the Wharton School of the University of Pennsylvania (1971-1978). I have also been a Visiting Professor at Yale University, UCLA, the U.S. Naval Academy, the Stockholm School of Economics, and the University of British Columbia.

My teaching experience at these universities includes courses in corporate finance, international finance, international economics, corporate financial strategy, international banking, macroeconomics, and microeconomics, for which I have won several teaching awards. Additionally, I have taught in numerous executive education programs, including programs sponsored by Yale University, the Wharton School, University of Southern California, UCLA, UC Berkeley, Columbia University, University of Hawaii, University of Washington, University of Melbourne, Stockholm School of Economics, and the American Management Association.



I have conducted numerous in-house training and executive programs for banks, corporations, government agencies, consulting firms, and law firms in the areas of corporate finance and international finance and economics.

In October 1993, I was recognized by *Business Week* as one of the ten most in-demand business school professors in the U.S. for in-house corporate executive education programs.

My publication credits include over 50 articles in such leading academic and professional journals as the *Journal of Finance*, *Harvard Business Review*, *Columbia Journal of World Business*, *Journal of Financial and Quantitative Analysis*, *Review of Financial Studies*, *Journal of Business*, *Journal of International Money and Finance*, *Financial Management*, *Management Science*, and *Journal of Applied Corporate Finance*. In 1988 I was cited as one of the "100 Most Prolific Authors in Finance." I was also cited in 2005 in the *Journal of Finance Literature* as one of the most frequent contributors to the academic finance literature over the past 50 years. Another study published in 1991 ranked me as one of the most prolific contributors to international business literature.

My article "Corporate Stakeholders and Corporate Finance," for which my co-author Brad Cornell and I received the 1987 Distinguished Applied Research Award from the Financial Management Association, is the most frequently cited article published in *Financial Management* since 1985.

I am a member of the American Finance Association, the American Economic Association, and the Financial Management Association.

I have published several books. These books include my textbook, *Multinational Financial Management* (John Wiley, 8th ed., 2006), which is in use in most of the leading MBA programs around the world; *Modern Corporate Finance* (Macmillan, 1990), cited by the *Journal of Finance* as potentially the "standard reference volume in corporate finance;" *Foundations of Multinational Financial Management* (John Wiley, 5th ed., 2005); *International Corporate Finance* (Ballinger, 1989); *Capital Budgeting and Investment Analysis*, (Prentice-Hall, 2005); and *Modern Corporate Finance: An Interdisciplinary Approach to Value Creation* (Prentice-Hall, 2000), coauthored with Sheldon Balbirer. In addition, I have published two monographs, *International Corporate Finance: Survey and Synthesis* and *Foreign Exchange Risk Management*.

I have served as a director of the American Finance Association, the Academy of International Business, and the Western Finance Association.

Among the various government agencies and departments for whom I have consulted are the FBI, Internal Revenue Service, Federal Home Loan Bank System, Resolution Trust Corp., Department of Justice, Securities and Exchange Commission ("SEC"), Department of Energy, California Franchise Tax Board, New York State Department of Taxation and Finance, Massachusetts Department of Revenue, Alabama Department of Revenue, and Federal Deposit Insurance Corporation.

I have also consulted with numerous firms and banks, involving analyzing various aspects of financial markets, financial institutions, and securities, including such matters as pricing stocks and bonds, corporate valuation, mergers and acquisitions, value-based management, and derivatives.

I also frequently serve as an expert witness in cases involving valuation of businesses and debt and equity securities, economic damages, economic substance, international finance, takeovers, financial analysis and accounting, and transfer pricing.

My curriculum vita is included in this report as Appendix A.

### III. Basis for Opinions

My opinions are based on my professional knowledge and experience, as well as on a review of documents and information relevant to this matter and analyses described in this report and assumptions I have been asked by counsel to make. Documents and other materials that I have relied on as a basis for my opinions are cited in this report; all documents and materials are of the type typically relied on by experts or financial economists in their research. Assumptions and analyses that form the bases for my opinions are described in this report.

The opinions offered in this report are subject to refinement or revision based on new or additional information that may be provided to or obtained by me in the course of this matter.

### IV. Summary of Opinions

My opinions in this matter are as follow:

- ***CSFB did not behave in a reasonable or reasonably prudent manner with respect to the services it provided to Oakwood.*** CSFB's various relationships with Oakwood afforded it access to information, both public and inside, about Oakwood's financial condition. Given Oakwood's financial condition and in line with its fiduciary responsibility to Oakwood and its creditors and its own guidelines and principles of conduct, CSFB should have advised Oakwood to reduce its operations or file for bankruptcy prior to its engagement as a financial advisor for restructuring purposes in August 2002.

- ***CSFB had financial incentives to keep Oakwood operating and to delay recommending that Oakwood file for bankruptcy.*** These incentives came in two forms: 1) CSFB continued to earn fees for the underwriting, lending, and advising services it provided as long as Oakwood continued as a going concern; and 2) due to its equity interest in Oakwood through warrants issued as a result of its participation in the loan purchase facility, CSFB stood to benefit if Oakwood did recover from its dire financial position. At the same time, even though CSFB was a lender to Oakwood, its interests differed from those of other Oakwood debt holders because its exposure to Oakwood was protected from the threat of bankruptcy. Thus, as a bankruptcy-insulated lender with an equity interest in the borrower, CSFB was exposed to the upside of an Oakwood recovery, no matter how remote the possibility, while insulated from the costs of a futile turnaround attempt. And, due to the potential of continued securitizations and other fees, CSFB stood to profit from the turnaround attempt even if it was not successful.

## **V. Assumptions**

### **V.A CSFB Owed Oakwood and its Creditors a Fiduciary Duty**

I have been asked by counsel to assume that CSFB owed Oakwood and its creditors a fiduciary responsibility.

### **V.B Oakwood Was Insolvent in September 2001**

I have also been asked by counsel to assume that Oakwood was insolvent in September 2001. This assumption is based on the expert report of Dr. Michael Tennenbaum.

## **VI. Background**

### **VI.A Manufactured Housing Industry**

The manufactured housing industry consists of companies that design and manufacture pre-fabricated and modular single- and multi-family homes. Manufactured homes are constructed in a controlled factory environment and include varying types that are designed for long-term residential use. Units are transported to a site and installed subsequent to being built in a factory. Top industry competitors include Clayton Homes, Champion Enterprises, Fleetwood Enterprises, and Oakwood Homes (which has subsequently been acquired by Clayton Homes). In addition to providing manufacturing and retailing services, some of these companies also assist homebuyers with financing needs. A number of companies, including Oakwood, have vertically integrated their manufacturing, retailing, and financing services.

## **VI.B Business Overview of Oakwood**

Oakwood was founded in North Carolina in 1946. The Company went public in 1971 and experienced consistent growth throughout the 1970s and 1980s. Oakwood designed, manufactured, and marketed manufactured and modular homes and financed the majority of its sales. In 2000, the Company operated 32 manufacturing plants in 12 states and sold its homes through 371 company-owned-and-operated sales centers and 575 independent retailers. The Company also sold insurance to its customers and assumed the related underwriting risk through its captive reinsurance business.<sup>1</sup>

In 1999, Oakwood was the largest U.S. retailer of manufactured homes and the third-largest manufacturer. Oakwood's financial services unit, Oakwood Acceptance Corporation ("OAC") securitized its loans and generated revenue through servicing fees as well as interest spreads.<sup>2</sup> Thus, Oakwood operated under a fully vertically integrated business strategy that offered its customers one-stop shopping by providing manufacturing, retailing, and financing services.

## **VI.C Financial Performance of the Industry Prior to 1999**

The manufactured housing industry has experienced a cyclical pattern of growth and decline over the past several decades. In the 1970s and early 1980s, steady growth occurred throughout the industry. However, in the mid 1980s, manufactured home companies began experiencing steep declines in their earnings as the result of changing economic and financial conditions: "Beginning in 1984, manufactured housing shipments posted eight years of consecutive declines, falling over 40% to a 1991 trough of 170,713 units. The significant downturn was due to a severe recession in the oil patch economy and a lack of available financing due to the savings and loan crisis. During this period, the number of manufacturers declined to 85 from 170."<sup>3</sup>

The manufactured housing market experienced a resurgence in the 1990s, due in part to the rising cost of conventional homes, the general economic recovery from the 1991 recession, and favorable financing terms. In the early 1990s, manufactured housing shipments grew at a five-year compound annual rate of 16.3 percent. In addition, increased competition among financing companies resulted in manufactured housing loans with down payments of 5 percent and longer maturities of 20 years to 25 years. As well, lenders effectively lowered credit standards by reducing

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<sup>1</sup> Mergent FIS. History & Debt. "Oakwood Homes Corporation." December 5, 2000.

<sup>2</sup> CSFB, Equity Research. "Manufactured Housing Industry." January 13, 1998. p. 16.

<sup>3</sup> *Ibid.*, p. 2.

the minimum acceptable level of credit worthiness.<sup>4</sup> Thus, the resurgence stemmed largely from a strong overall economy and greater availability of financing, as well as from improved product offerings by industry manufacturers.

All of the major competitors enjoyed high returns on invested capital and extremely attractive valuations. Throughout the 1990s, shares of manufactured housing companies outperformed the Standard & Poor's ("S&P") 500 Index; in particular, an index of manufactured housing companies experienced annual growth rates in stock prices of 40 percent, 26 percent, and 29 percent over three-, five-, and ten-year periods, respectively.<sup>5</sup> Also, the favorable effects of economies of scale resulted in consolidation within the industry. In 1996, the largest four companies, Champion, Fleetwood, Oakwood, and Clayton, accounted for almost half of all industry shipments.<sup>6</sup>

The year 1998 was a particularly auspicious year for the industry. Shipments of manufactured houses had increased by 5.5 percent over 1997, and the pace of the increase was accelerating (December 1998 shipments were 10.9 percent higher than in December 1997). Strong job growth, low interest rates, and the continuing desire for home ownership supported continued growth.<sup>7</sup> The significant upturn in the overall industry throughout the 1990s led manufactured housing companies to drastically expand the number of manufacturing production sites and retail outlet stores. However, as discussed below, as conditions changed near the end of the decade, overcapacity began to plague the industry.

#### **VI.D Industry Downturn Beginning in 1999**

After a dramatic increase in manufactured housing demand throughout the 1990s, sales began to decline by 1999, due largely to tightening lending standards.<sup>8</sup> Aggressive lending practices that emerged in the 1990s began to catch up with the industry. Delinquency and repossession rates rose dramatically, forcing lenders to tighten their lending criteria by increasing both credit standards and mortgage interest rates. Tighter standards led to lower demand. The industry's poor performance also stemmed from problems in the securitization market. Lenders were engaging in aggressive underwriting and accounting practices, which translated into paying more to have their loans securitized.<sup>9</sup>

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, p. 7.

<sup>6</sup> *Ibid.*, p. 3.

<sup>7</sup> Arnold and Bleichroeder, Inc. Manufactured Housing Research. "A Strong Close for a Good Year: Shipment Rise for Seventh Consecutive Month." February 4, 1999. p. 1.

<sup>8</sup> Amilda Dymi. National Mortgage News. "Recovery When for Manufactured Housing?" November 13, 2000. Vol. 25, Issue 9.

<sup>9</sup> Arnold and Bleichroeder, Inc. Manufactured Housing Research. "A Strong Close for a Good Year: Shipment Rise for Seventh Consecutive Month." February 4, 1999. p. 2.

The reduction in demand led to an industry-wide excess-inventory problem. Manufacturers had expanded too quickly to support this adjustment in demand, leading to overcapacity of manufactured housing plants. Likewise, retailers had purchased too much inventory. By November 1999, manufactured housing shipments had dropped 14.7 percent compared to the previous November, and analysts projected a 7.5 percent decline for the 1999 calendar year.<sup>10</sup>

The pace of the decline in shipments accelerated in the following months. In March 2000, for example, shipments of manufactured homes had decreased by 23 percent from March 1999 as manufacturers continued to cut back production in response to deteriorating demand.<sup>11</sup> Several companies began closing retail outlets because they could not secure inventory financing as a result of many consumers failing to qualify for loans. "While [industry] stocks ... [had] been inexpensive for some time, [Arnold & Bleichroeder] believed the bad news had not yet stopped,"<sup>12</sup> recommending against purchasing stocks in the manufactured housing industry.

By the end of 2000, companies began responding to the sluggish demand by closing plants or exiting the industry altogether. By November 2000, manufacturers had closed at least 50 plants and capacity had declined by 15 percent since the beginning of the year.<sup>13</sup> Nearly 800 retailers had exited the industry, with another 1,000 expected to follow.<sup>14</sup> Although many hoped the industry would reach the bottom of its downturn in late 2000, the industry had still failed to rebound by 2002.

## **VI.E Oakwood's Downturn and Bankruptcy**

### **VI.E.1 Oakwood's Financial Condition Was Deteriorating in 1999 and 2000**

Like other companies in the manufactured housing industry, Oakwood enjoyed tremendous growth in the 1990s. While it experienced greater growth than many of its competitors during that time, Oakwood's financial condition and operations also suffered more than most during the industry downturn.

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<sup>10</sup> Arnold and Bleichroeder, Inc. Global Viewpoint. Manufactured Housing: November. "November Shipment Fell Nearly 15% - Bad News Continues." January 13, 2000.

<sup>11</sup> Arnold and Bleichroeder, Inc. Global Viewpoint. Manufactured Housing: March. "Shipments Dropped 23% This Month." April 28, 2000. p. 1.

<sup>12</sup> *Ibid.*

<sup>13</sup> Amilda Dymi. National Mortgage News. "Recovery When for Manufactured Housing?" November 13, 2000. Vol. 25, Issue 9.

<sup>14</sup> *Ibid.*



By June 1999, Oakwood's retail sales had dropped 16 percent on a per-home basis while total dollar sales dropped 10 percent, on a year-over-year basis. The Company's inventory had increased more than any of its competitors. With higher inventory per dealer and lower sales per outlet, Oakwood's inventory days outstanding increased by 57 percent year-over-year.<sup>15</sup>

The Company's earnings and valuation declined dramatically. In the second quarter of 1999, Oakwood took a \$45 million earnings charge because of higher-than-expected defaults and refinancings on its mortgage loans. With a market value of \$600 million, the Company's share price dropped 52 percent over a 12-month period to about \$12 per share. The credit-rating agencies also reacted to Oakwood's precarious financial condition; Moody's downgraded the junior tranches of some of the company's asset-backed securities ratings.<sup>16</sup>

These trends continued in the following quarters. In September 1999, Oakwood's inventory per outlet was up 13 percent year-over-year. The increase was attributed to lower-than-expected sales. The Company responded by closing three plants and lowering manufacturing rates. In addition, Oakwood significantly discounted prices and mortgage rates in hope of reducing its inventory.<sup>17</sup>

In January 2000, Oakwood's \$300 million in long-term debt traded for around 50 cents on the dollar, causing some analysts to believe that "Oakwood's foundation had sunk deeper into the distressed pit and that there was not much to buttress it."<sup>18</sup> With its financial condition spiraling downward, the Company struggled to maintain its operations. Oakwood was in a liquidity crisis, and it tried to stay above water until overall industry conditions could rebound.

However, in November 2000, an article in the *Winston-Salem Journal* reported that "if there is a light at the end of the tunnel, Oakwood Homes Corporation does not expect to see it for a while." In particular, Oakwood lost \$82.9 million in the fourth quarter of 2000 from its excessive retail outlets and high inventory levels. This was the fifth consecutive quarter in which Oakwood lost money. During calendar year 2000, Oakwood's stock price fell 86 percent. In fiscal year ("FY") 2000, Oakwood reported a net loss of \$121 million, compared to a net loss of \$31.3 million in 1999. On November 28, 2000, Oakwood's stock price closed at 56 cents per share on the New York Stock Exchange, raising the possibility that it would be de-listed.<sup>19</sup>

<sup>15</sup> CSFB. Equity Research. "Second Quarter 1999: Retail Inventory Update." September 9, 1999.

<sup>16</sup> Shane Kite. Asset Sales Report. "Oakwood: Earnings halved, ABS roots intact." June 28, 1999. Vol. 13. Issue 26.

<sup>17</sup> CSFB. Equity Research. "Second Quarter 1999: Retail Inventory Update." September 9, 1999.

<sup>18</sup> Rick Appin. High Yield Report. "Bonds Sink to Distressed Area." January 24, 2000. Vol. 11, Issue 4.

<sup>19</sup> Adrian Zawada. Winston-Salem Journal. "Set for a Long Haul; Oakwood Homes' Losses Grow; Outlook of Manufactured-Housing Industry Still Uncertain as Tougher Lending Standards Cut Demand." November 29, 2000.

Oakwood's outlook became more precarious given that no industry upturn was expected in the near future. Robert Curran, a financial analyst at Merrill Lynch Global Securities, stated that "the manufactured housing industry would continue to suffer into spring 2001, if not longer."<sup>20</sup> Mr. Curran reasoned that higher lending standards and interest rates were restricting demand for an already-overbuilt market. In addition, loan foreclosures and repossessions were diminishing demand for new homes.<sup>21</sup> These predictions turned out to be correct as Oakwood continued to suffer losses throughout 2001.

#### **VI.E.2 Oakwood Continued to Report Significant Losses in 2001**

In the first quarter of 2001, Oakwood reported losses of 91 cents per share. Duane Daggert, Oakwood's President and Chief Executive Officer at the time, stated that "we expect the current difficult market conditions to continue, possibly into next year."<sup>22</sup> With little hope of a recovery any time soon, Oakwood shares were trading at approximately \$1.40 per share in late January 2001. The second quarter of 2001 affirmed Mr. Daggert's expectations. Oakwood lost \$28 million, more than double its \$12 million loss during the same period the year before. Given that Oakwood financed most of its home sales, the Company was widely exposed to buyers who were unable to continue to make mortgage payments.<sup>23</sup> By the fourth quarter of 2001, Oakwood lost \$49.5 million, or \$5.24 a share. In all, the Company lost \$176 million, or \$18.68 per share, in fiscal year 2001. Not only was this loss greater than its previous fiscal year loss, it was also the third straight fiscal year for which Oakwood reported a loss.<sup>24</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Amy Joyner. Greensboro News & Record. "Oakwood Homes Loses \$43 Million The Manufactured Housing Company Says That Sales are Improving Slightly." January 27, 2001.

<sup>23</sup> Associated Press Newswires. "Oakwood Homes Struggles to Pull Out of Slump." May 10, 2001.

<sup>24</sup> Brian Louis. Winston-Salem Journal. "Oakwood Cuts Losses in Quarter; Fiscal Year is Worse than 2000; Woes are Industrywide." November 21, 2001.



### **VI.E.3 Oakwood Discontinued Its Loan Assumption Program and Reported Losses in 2002**

In the first quarter of 2002, Oakwood reported a loss of \$1.05 per share compared with a loss of \$5.36 per share the previous year. Delinquencies on Oakwood-originated contracts rose to 6.7 percent compared with 5.8 percent a year before. Likewise, repossessions rose 25 percent from the prior year.<sup>25</sup> By this time, Oakwood's stock was trading at less than a third of its book value and CSFB research analysts believed the current valuation reflected a more dismal outlook.<sup>26</sup>

In the second quarter of 2002, Oakwood reported operating losses amounting to \$6.25 per share. While wholesale sales increased somewhat, retail sales declined 20 percent, resulting in a 7 percent overall decline in total sales. Provisions for credit losses also increased to \$25 million compared with \$2.3 million the year before, \$20.4 million of which was associated with its Loan Assumption Program ("LAP"). The Company's earnings before income and taxes (EBIT) margin declined to -18.7 percent versus -8.9 percent from 2001. Oakwood also experienced a loss of \$2.2 million associated with a \$156 million securitization.<sup>27</sup>

By May 2002, CSFB research analysts noted "the uncertainty in the industry with respect to how long it drags along the bottom before realizing any meaningful rebound."<sup>28</sup> Oakwood's financial condition still suffered from increases in its delinquency and repossession rates. With respect to the Company's balance sheet, Oakwood had about \$41 million in short-term debt outstanding, \$25.9 million in cash, and \$322.9 million in long-term debt. Oakwood also recorded pre-tax charges of \$1.2 million relating to the impairment of the value of certain retained interests in loan securitizations. The Company took a similar charge of \$0.4 million in the second quarter of 2001.<sup>29</sup>

In July 2002, Oakwood terminated its LAP after significantly increasing its use in 2001 and early 2002. The Company used the LAP mainly to avoid the high costs associated with repossession, including refurbishment costs, relocation costs, and costs associated with forced eviction. Under the LAP, Oakwood would arrange for new mortgagees to assume mortgages that were in default instead of repossessing the home. Oakwood would offer a borrower in default an opportunity to assign its mortgage to another borrower with a credit profile similar to the current

<sup>25</sup> CSFB, Equity Research. "OH: FY1Q02 EPS Loss of \$1.05 Versus a Loss of \$5.36 A Year Ago." January 25, 2002.

<sup>26</sup> *Ibid.*

<sup>27</sup> CSFB Equity Research. "OH: FY2Q02 Operating Loss of \$6.25." May 1, 2002. p.1.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, p. 2.

borrower. The delinquent loan would remain classified as such until a qualified borrower was found, and would then become re-aged. The payments during the delinquent months would be advanced by the servicer and the new mortgagee would then be required to pay all of the back payments from the original borrower, thus reimbursing the servicer.

For the nine-month period ending the second quarter of 2002, the mostly cash LAP expense had grown to \$51 million. Oakwood could not afford this cash cost and thus terminated the LAP. In so doing, it passed much of the expected future losses to the bondholders. With the discontinuation of the LAP, all new problem loans were classified as repossessions.

In the third quarter of 2002, Oakwood's retail sales continued to drop. Oakwood reported an operating loss of \$1.29 per share compared with a loss of \$6.92 the year before. Two non-recurring expenses totaling \$100.8 million were recorded, \$86.5 million of which consisted of charges related to the curtailment of Oakwood's LAP. Thus, Oakwood reported an earnings loss of \$12.61 per share. Future credit losses were also expected from Oakwood's plan to sell off inventory through lower-margin wholesale channels rather than through retail channels.<sup>30</sup> By September 2002, Oakwood shares had lost approximately 99 percent of their value over the course of a three-year period.<sup>31</sup> On October 25, 2002, CSFB dropped its coverage of Oakwood due to its lack of liquidity and small market capitalization.<sup>32</sup>

#### **VI.E.4 Oakwood Filed for Bankruptcy in November 2002**

On November 15, 2002, Oakwood filed for Chapter 11 bankruptcy. At this time, Oakwood had structural problems with its loan portfolio and was out of cash; Oakwood's board of directors and senior management made the decision to file for bankruptcy.<sup>33</sup>

Between 1999 and 2002, many factors caused both Oakwood and the industry to suffer a major financial downturn, including overcapacity, excessive number of retailers, increasing number of repossessions and lenders exiting the industry. During his testimony, Douglas Muir, Oakwood's Chief Financial Officer, stated several reasons for the decline in Oakwood's performance that led to its Chapter 11 filing. First, he believes there was "a deep and sustained downturn" in the industry, during which shipments from manufacturers to retailers declined by 60 percent from their peak in 1998. This decline was causing lenders to exit the business. He

<sup>30</sup> CSFB, Equity Research. "OH: Fiscal 3Q02 Operating Loss of \$1.29 Per Share." August 8, 2002.

<sup>31</sup> Monte Burke, *Forbes*. "Trailer King." September 30, 2002. Vol. 170, Issue 6.

<sup>32</sup> CSFB, Equity Research. "Oakwood Homes Corporation: Dropping Coverage." October 25, 2002.

<sup>33</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006, p. 9.

believes the downturn could still be occurring. Second, Mr. Muir believes Oakwood built too many sales centers and factories and expanded at a rate that it could not manage. Third, he cited insufficiently stringent underwriting standards.<sup>34</sup> Finally, there was an economic recession during this period. Mr. Muir gave an example of North Carolina textile workers losing 30,000 jobs over a two- to three-year timeframe. Because a large number of those workers lived in mobile homes, a large number of loans defaulted.<sup>35</sup>

## **VII. CSFB Did Not Behave In a Prudent Manner**

In this section I demonstrate that CSFB did not behave in a prudent manner in its dealings with Oakwood given its fiduciary responsibilities. I first establish that CSFB was, as a result of its multiple relationships with Oakwood, in a unique position to know Oakwood's true financial condition (as noted previously, I have been asked to assume that Oakwood was insolvent in the fall of 2001). I then show that CSFB's actions with respect to its own risk exposure to Oakwood suggest cognizance of Oakwood's bankruptcy risk. Finally, I demonstrate that CSFB's advice and conduct with respect to Oakwood was inappropriate given the Company's financial condition and violated its fiduciary duty to Oakwood and its creditors as well as its own guidelines.

### **VII.A CSFB Had Access to Public and Private Information Concerning Oakwood's Financial Condition**

Among its roles, CSFB acted as Oakwood's lender, financial advisor, and underwriter. As such, CSFB had access to information about the Company's true financial condition. In this section I discuss the access to information that investment bankers enjoy, review the investment banking activities and other functions performed by CSFB for Oakwood, and demonstrate that CSFB had access to both public and inside information concerning Oakwood's financial situation and outlook.

#### **VII.A.1 Investment Banks Have Unique Access to Information**

An investment bank is a financial intermediary that performs functions for the issuer of securities including underwriting and advising. By providing these services, investment banks necessarily have access to information about the financial conditions of their clients.

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<sup>34</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006, p. 59.

<sup>35</sup> *Ibid.*, p.183.

The role of the investment bank begins with pre-underwriting counseling to the issuer and continues after the distribution of securities in the form of advice.<sup>36</sup> The advising function has value to the issuer because investment banks have better information about the capital market than does the issuer.<sup>37</sup>

Before an investment bank can commence with issuing securities, it must first conduct a due-diligence investigation of the issuing firm it represents. This investigation begins with inquiries into the issuer's business and operations consisting of an investigation into the issuer's industry and discussions with the issuer's management.<sup>38</sup> This study entails gathering and assessing all essential and relevant information that could have a bearing on the valuation of the securities the investment bank is seeking to place. Such information would include a review of the company's basic business strategy and competitive advantages, as well as evidence of the company's success in pursuing its business strategy. During its discussions with management, the investment bank is provided with information management believes should appear in the registration statement.<sup>39</sup> The investigation is designed to give the investment banker a reasonable basis to believe that the key representations made to investors are true, accurate, and complete, so that investors can make informed decisions after understanding the risks and returns of the securities they are purchasing. It is also designed to enable the investment bank to assess whether management is capable of achieving its prospective goals. The underwriter's duty is to independently verify the information that the issuer's management provides to it.<sup>40</sup>

As underwriter, the investment bank is also responsible for examining the issuer's current financial health and future financial prospects. Toward this end, the investment bank must review the issuer's financial statements, which in turn requires scrutinizing the independent auditor's report and letters to management to determine whether all potential problem areas were uncovered during the audit. In addition, it should examine general financial issues of the issuer, including profits and revenue, budget concerns, and the internal audit controls the issuer has in place; this review provides the investment bank with an in-depth understanding of the issuer's overall financial condition.<sup>41</sup>

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<sup>36</sup> "Investment Bank," Investopedia website. <http://www.investopedia.com/terms/i/investmentbank.asp>, accessed April 2007.

<sup>37</sup> David P. Baron, "A Model of the Demand for Investment Banking Advising and Distribution Services for New Issues," *Journal of Finance*, Vol. 37, No. 4, September 1982, p. 1.

<sup>38</sup> FindLaw, "Underwriter Due Diligence in Securities Offerings," FindLaw website, <http://library.findlaw.com/1999/May/27/126952.html>, accessed April 2007.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

To thoroughly assess a company's financial condition, investment banks rely on both publicly available information and inside information supplied by the client. Investment banks also interact with other financial intermediaries to obtain all publicly available information. These institutions include credit-rating agencies, lawyers, accountants, other investment banks, and market analysts.

In addition to providing underwriting services, investment banks provide advice and assist corporate clients with mergers and acquisitions, reorganizations, and strategic matters such as leveraged buyouts and joint ventures. Other activities involve structuring and implementing transactions as a way to manage the variety of risks a client is exposed to. These transactions include structured or project finance through the use of derivatives and off-balance-sheet transactions. In addition, investment bankers aid their clients in obtaining funding on more desirable terms, thereby providing liquidity and investment opportunities, as well as facilitating risk dispersion. As discussed below, the functions CSFB performed for Oakwood went beyond those associated with underwriting securitizations; CSFB also served an advisory role.

#### **VII.A.2 Relationship between Oakwood and CSFB**

CSFB served as Oakwood's investment banker and thus enjoyed the type of access to information described previously. In fact, the services provided by CSFB to Oakwood consisted of assisting the Company in raising funds through the capital markets by underwriting securities, acting as a lender for Oakwood's loan purchase facility, and serving as Oakwood's financial advisor.

##### **VII.A.2.a Role as Lead Securities Underwriter**

CSFB began to serve as Oakwood's securities underwriter in 1994. Over the next eight years, CSFB wrote more than \$7.5 billion in Oakwood securities over approximately 25 securitizations.<sup>42</sup> As Oakwood's lead securities underwriter, CSFB's roles were

- Advising and assisting Oakwood's management and directors in setting the terms of the securities sales;
- Conducting reasonable due diligence into the accuracy of the written representations of the prospectuses;
- Testing the financial information contained in the prospectuses; and
- Facilitating the sale of the securities.

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<sup>42</sup> *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*. Objections and Counterclaims. November 13, 2004.

Fiachra O'Driscoll, a Managing Director of CSFB's Asset Finance Group, stated that CSFB's role as Oakwood's lead securities underwriter entailed the structural and financial engineering of Oakwood's securitizations.<sup>43</sup> In particular, the structural and financial engineer's role was to

[D]o the analysis of the loans themselves, the characteristics of the loans, the performance of the loans, to do the analysis of the securities to put together scenarios for those securities that are commonly referred to in the industry as what's known as computational material.<sup>44</sup>

In the course of a mortgage securitization, CSFB would then approach the rating agencies and explain the nature of the transaction to be conducted. CSFB would "prepare the rating agencies for the rating process and [would] prepare materials which included circulars, red herring, sales points and sales materials for purely internal consumption."<sup>45</sup> The information that CSFB supplied to the rating agencies entailed a summary form of information on the loan pool itself, which included, among other things, the principal balances and weighted average coupon rates on the loans, as well as the loan-to-value ratio on average for all of the loans. In addition, CSFB supplied information on the performance of Oakwood's past securitizations with a summary of prepayment, delinquency, and loss performances, as well as changes in the coupon rate and in the characteristics of the loan pools in question.<sup>46</sup> Finally, on completing analysis of the loan portfolios and working closely with the credit rating agencies, Mr. O'Driscoll explained that the role of the asset securitization team was to

[E]nsure that the transaction was put together in a timely fashion, to make sure that the questions of the sales force were answered, to make sure that investors questions were answered, to make sure that the legal structure of the mortgage securitization itself worked as it probably – or properly should do, and to make sure that the transaction got closed, processed, and that it was dealt with in the after market in a timely fashion.<sup>47</sup>

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<sup>43</sup> Deposition of Fiachra O'Driscoll, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 29, 2006, Vol. 1. p. 13.

<sup>44</sup> *Ibid.*, p. 16.

<sup>45</sup> *Ibid.*, p. 17.

<sup>46</sup> *Ibid.*, p. 21.

<sup>47</sup> *Ibid.*, p. 18.



In 2001 and 2002, CSFB sold and underwrote approximately \$850 million in real estate mortgage investment conduit (“REMIC”) certificates. The securitization process was an integral part of Oakwood’s business model. In addition to selling the manufactured homes to a customer, as discussed, Oakwood also typically provided the customer with financing for the home. To provide the liquidity it needed to offer the mortgage loans, Oakwood would bundle these loans and securitize them. Typically, Oakwood would accumulate between \$150 million and \$200 million worth of mortgages before engaging in the securitization process and selling REMIC certificates to the public. REMICs are mortgage-backed securities (“MBSs”), a class of asset-backed securities (“ABSs”), that are pass-through securities in which mortgages are pooled, securities are issued, and investors receive a pro rata share of principal and interest payments paid by the homeowners. In particular, investors in the Oakwood-issued REMICs were receiving their share of the principal and interest payments paid by the homeowners who purchased and financed their homes through Oakwood. Therefore, the riskiness of these securities was directly related to the credit-worthiness of these homeowners. The ability to finance the sales of its manufactured homes was critical to Oakwood’s integration strategy, as it generated the liquidity necessary to continue financing the homes it was selling and enabled Oakwood to maintain its competitive position.<sup>48</sup>

As discussed, CSFB was responsible for underwriting these REMICs. As part of this process, Oakwood provided CSFB with inside information, including the historical loss experience of the securitized pool of assets, the repossession and foreclosure rates, and the credit quality of each home buyer. CSFB used this information to prepare the prospectus for an impending securitization. CSFB also provided the credit-rating agencies with enough information to obtain bond ratings for each class of the issued securities.

#### **VII.A.2.b Role as Provider of Loan Purchase Facility**

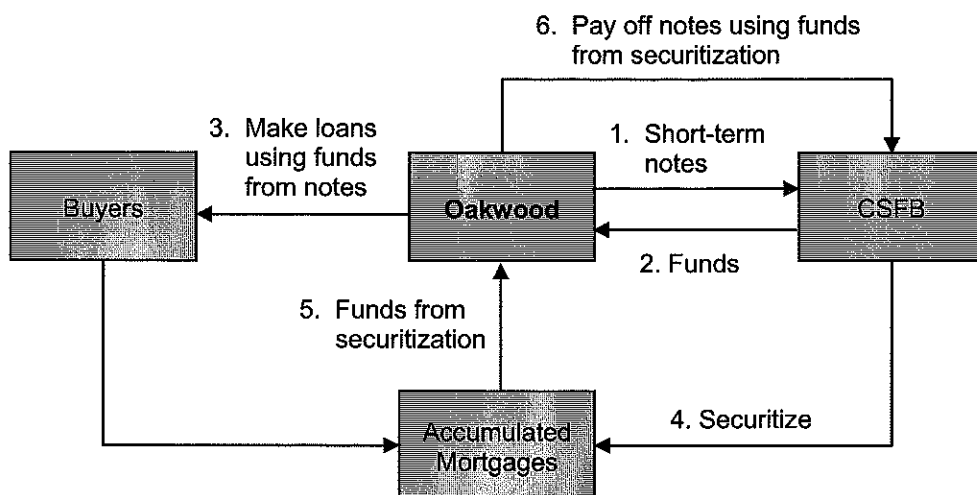
In February 2001, CSFB became a secured lender to Oakwood via the \$200 million “Warehouse Facility.” Prior to February 2001, Enterprise Funding Corporation, a Bank of America affiliate, acted as lender to Oakwood by purchasing these notes from the Warehouse Trust. In February, Bank of America decided not to renew the Warehouse Facility, and CSFB assumed the role as lender to Oakwood by purchasing the notes from the Warehouse Trust. The Warehouse Trust was vital to providing liquidity for Oakwood’s securitization business.

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<sup>48</sup> Foothill Interoffice Memorandum. Credit modification request between Oakwood and Foothill. November 26, 2002. p. F-658.

This Warehouse Facility was another integral part of Oakwood's business because it provided the temporary liquidity Oakwood needed to securitize the loans. In essence, the Warehouse Facility was like a revolving line of credit. As the lender to Oakwood, CSFB purchased short-term notes from Oakwood. Oakwood used the funds it received from selling these notes to CSFB to originate the loans to its customers. As discussed, after accumulating a pool of mortgages valued between \$150 million and \$200 million, Oakwood proceeded with its securitization process, with CSFB as its underwriter. Upon receiving the funds from the securitization, Oakwood would pay off the outstanding notes purchased by CSFB. Figure 7.1 illustrates this process. Because the Warehouse Facility provided the temporary liquidity Oakwood needed to originate the loans to its customers, if CSFB did not take over the role as lender, its securitization business would have immediately collapsed.

**Figure 7.1: Oakwood's Securitization Process**



#### **VII.A.2.c Role as Financial Advisor**

While acting as an underwriter and lender, CSFB also served as a financial advisor to Oakwood. According to Myles Standish, Oakwood's Chief Executive Officer, prior to signing the Financial Advisory Services agreement on August 19, 2002, CSFB's role was an advisor to Oakwood's overall financial and liquidity condition.<sup>49</sup> Likewise, Clarence Walker, a thirty-one year member of Oakwood's Board of Directors, stated:

<sup>49</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006, p. 13.



I know that there was a point in time when the board approved a specific contractual arrangement with CSFB, but that was fairly late in the game and I have the sense that CSFB was providing advice both to the audit committee and the board prior to that. The audit committee looked to CSFB for some advice relating to the model that [Oakwood was] using to evaluate the repossessions and the securitizations.<sup>50</sup>

Jared Felt, Director of CSFB's Restructuring Group, confirmed that CSFB acted as advisor to Oakwood prior to formally being engaged in that role, testifying that "prior to being engaged [as a formal financial advisor], [CSFB] was working to provide ideas and to provide [Oakwood] with [CSFB's] best advice."<sup>51</sup>

During its relationship with Oakwood, CSFB provided financial advice and presented Oakwood with certain business strategies to help the Company overcome its precarious financial position. CSFB assisted and advised Oakwood on a number of financial and business-related issues aside from its roles as an underwriter of securitizations and secured lender. Prior to CSFB's formal engagement as Oakwood's financial advisor, Douglass Muir noted that

[t]here were a number of occasions when people from CSFB outside the investment banking side, for example, perhaps from the investment banking side or the financial advisory side came and talked to us about ideas. These were not engagements where there was an engagement letter and they were getting a fee. [CSFB would] just come down and say hey, we've been thinking about you. Here's an idea. Why don't you consider this.<sup>52</sup>

Mr. Muir also testified that Oakwood regularly solicited feedback from CSFB with respect to any significant action taken by the Company:

It was not unusual and, in fact, it was practice for me anytime [Oakwood] made any substantive business decision that might have a material impact or even a less than material but significant impact on anything having to do with loan originations, the ABS program, loan servicing, it was my practice always to inform CSFB of what we were doing and why we were doing it and solicit feedback. So to the extent that's weighing in, yeah, [CSFB] sure did. [CSFB was] asked to weigh in.<sup>53</sup>

<sup>50</sup> Deposition of Clarence W. Walker, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, December 12, 2006, p. 73.

<sup>51</sup> Deposition of Jared Felt, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 15, 2006, p. 89.

<sup>52</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006. Vol. 1, p. 64-5.

<sup>53</sup> *Ibid.*, p. 194-5.

Furthermore, CSFB advised Oakwood on issues relating to the Company's credit standards. In an attempt to reduce its defaults rate and improve the collateral of Oakwood's subordinated notes, CSFB consulted Oakwood regularly with respect to ways in which the Company could tighten its lending standards. As Mr. Muir stated:

So in the event that someone was thinking about making a decision that affected which customers got approved and which didn't or the terms under which loans were originated in terms of down payment, interest rate, credit score, real property versus personal property, [Oakwood] would often consult with CSFB on that to get their view on how that would affect the market's perception of the collateral.<sup>54</sup>

Aside from attempting to help Oakwood reduce its levels of defaults and repossessions in the Company's securitization portfolios, CSFB assisted the Company in other general business issues such as the condition of Oakwood's balance sheet. Jared Felt stated that CSFB was "initially trying to solicit [Oakwood's] business and in the process of doing that, trying to help them understand creative ways to address their balance sheet issues that we saw."<sup>55</sup> Furthermore, Mr. Felt stated that CSFB was "trying to provide [Oakwood] with good ideas primarily and also hoping to gain their trust so that they would work with us as opposed to someone else."<sup>56</sup> In response to being asked how CSFB's advisory role changed subsequent to its formal engagement, Felt testified that "then of course [CSFB] shifted from an idea generation mode to more of an active role in trying to help [Oakwood] address their needs."<sup>57</sup>

CSFB provided financial advice and assistance to Oakwood both before and after it was engaged as a financial advisor. Although CSFB did not begin earning fees specific to its role as a financial advisor until after its formal engagement with Oakwood, the Company still relied on CSFB's representations and assistance prior to that time as financial advice. In describing the long-standing relationship between Oakwood and CSFB, Mr. Standish asserted that "certainly there was a lot of trust, a lot of loyalty between the two entities."<sup>58</sup> In light of CSFB's advice and assistance prior to and subsequent to its formal engagement with Oakwood as a financial advisor, the parties created an extra-contractual financial advisory relationship.

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<sup>54</sup> *Ibid.*, p. 45.

<sup>55</sup> Deposition of Jared Felt, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 15, 2006, p. 64.

<sup>56</sup> *Ibid.*, p. 86.

<sup>57</sup> *Ibid.*, p. 89.

<sup>58</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006. Vol. 1, p. 47.

**VII.A.2.d Role as Financial Advisor for Restructuring Purposes**

As discussed, on August 19, 2002, CSFB became Oakwood's exclusive restructuring and financial advisor pursuant to the Financial Advisory Agreement (the "Agreement") between Oakwood and CSFB.<sup>59</sup> Upon being asked as to why Oakwood decided to retain CSFB as its financial advisor for restructuring purposes, Mr. Muir responded that "[CSFB] had a very, very long history with the company going back to 1994 ... We liked them. We trusted them."<sup>60</sup> According to the Agreement, Oakwood retained CSFB as its exclusive financial advisor by fulfilling the following services:

- Assisting Oakwood in its evaluation of certain strategic alternatives and possible means of execution;
- Assisting in preparing materials describing Oakwood's operations, its historical financial results, and future prospects to be provided to qualified acquirers;
- Identifying and contacting potential acquirers of Oakwood;
- If requested, rendering an opinion as to the fairness from a financial perspective of a proposed sale transaction;
- Advising Oakwood with respect to the terms and timing of any restructuring transaction;
- Assisting Oakwood in the preparation of documents that relate to the terms of a restructuring transaction; and
- Assisting Oakwood in soliciting tenders and consents in connection with any restructuring transaction.

The Agreement between Oakwood and CSFB also stated that Oakwood was to use its best efforts to secure a court order approving the retention of CSFB as its exclusive financial advisor in the event of an order for relief concerning a case by or against the Company pursuant to Title 11. In addition, the Agreement stated that CSFB had the right but not the obligation to act as dealer manager with respect to any restructuring transaction, and CSFB had the right but not the obligation to act as exclusive placement agent for Oakwood in connection with any sale of its securities.<sup>61</sup>

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<sup>59</sup> Financial advisory services agreement between Oakwood Homes Corporation, Oakwood Acceptance Corporation, Oakwood Mobile Homes, Inc., HBOS Manufacturing, LP. And Credit Suisse First Boston, August 19, 2002.

<sup>60</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006. Vol. 1, p. 143.

<sup>61</sup> Financial advisory services agreement between Oakwood Homes Corporation, Oakwood Acceptance Corporation, Oakwood Mobile Homes, Inc., HBOS Manufacturing, LP. And Credit Suisse First Boston, August 19, 2002.

According to Mr. Standish, CSFB's primary role as Oakwood's restructuring financial advisor was to prepare the Company for a bankruptcy filing. Toward that end, he believed CSFB was to do everything possible to avoid a free-fall bankruptcy and to make the bankruptcy as close to a prepackaged bankruptcy as possible. However, Mr. Standish also stated that CSFB believed its role included providing alternative courses of action, such as a sale of the Company, but that he personally saw CSFB's role as preparing for the bankruptcy filing.<sup>62</sup> Mr. Muir believed CSFB's role as restructuring financial advisor was to be an effective advisor to Oakwood and to get the Company through bankruptcy successfully with minimal damage to the business. Oakwood needed to have debtor-in-possession financing arranged and a warehouse financing facility.<sup>63</sup>

Table 7.1 provides a brief summary of the roles performed by CSFB and the fees earned for its services to Oakwood (I discuss the fees received by CSFB in more detail in Section VIII).

**Table 7.1: CSFB's Roles and Fees Earned**

Role	Description	Fees Earned
Lead Securities Underwriter	Lead securities underwriter for about 25 securitizations; underwriting totaling more than \$7.5 billion in Oakwood securities	At least \$30 million
Secured Lender	Over-secured lender to Oakwood's \$200 million Loan Purchase Warehouse Facility in February 2001	<ul style="list-style-type: none"> <li>▪ Warrants of 19.9% of Oakwood's Common Stock</li> <li>▪ Upfront fee of \$2.5 million</li> <li>▪ Program Fee of \$15 million</li> </ul>
Financial Advisor	Provide ideas and advice to Oakwood regarding its overall financial and liquidity condition	No direct fees earned; Role used to pitch business as a way to earn underwriting and lending fees
Financial Advisor for Restructuring Purposes	Assist Oakwood in evaluating strategic alternatives, employing restructuring options, contacting potential acquirers of the firm, and preparing Oakwood for bankruptcy	\$1.8 million

<sup>62</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006, p. 163.

<sup>63</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006, p. 152.

This section and section VII.A.1 demonstrate that investment banks are in a unique position to access information concerning the financial conditions of their clients and that CSFB's professional responsibilities with respect to Oakwood went beyond its role of underwriter. In light of the numerous roles CSFB served for Oakwood, CSFB had access to both public and private information about the Company's financial condition. In the following section I show that CSFB did in fact obtain public and inside information about Oakwood's financial condition and outlook.

### **VII.A.3 CSFB Obtained Both Public and Inside Information about Oakwood's Financial Condition**

Given its roles as underwriter, lender, and financial advisor, CSFB obtained both public and private information from Oakwood, credit-rating agencies, and other market analysts. Oakwood provided CSFB personnel with substantial amounts of confidential information, including the historical loss experience of the securitized pool of assets, repossession and foreclosure rates, and the credit quality of each home buyer. This information was relevant to an assessment of whether the manufactured housing industry in general was experiencing a significant downturn, and whether Oakwood in particular was suffering from an insolvent financial position from which it would not likely recover.

As early as June 1999, Moody's and S&P rated Oakwood's unsecured senior notes as Baa3 and BBB-, respectively – the lowest investment-grade ratings. Any downgrade would result in a junk bond status. Both Moody's and S&P placed the Company on a negative credit watch given that Oakwood's third-quarter results were anticipated to be as much as 50 percent lower than expectations.<sup>64</sup> By November 1999, Moody's and S&P had downgraded Oakwood's ratings on its corporate credit and long-term senior debt securities to below investment grade with a negative outlook.<sup>65</sup> In late 2000, the credit-rating agencies continued to downgrade Oakwood's credit rating. In lowering the credit rating of the Company's senior notes from BB- to CCC, S&P viewed Oakwood as having the highest-risk junk bond rating possible before entering default status. S&P maintained a negative outlook on Oakwood based on its belief that the Company's "current operating loss position will continue well into [2001], due to lower volumes at manufacturing, continued pricing pressures at retail, and higher costs within its captive finance

<sup>64</sup> CSFB New Customer Credit Review dated July 16, 1999. Document # CSFB-00250093.

<sup>65</sup> Email from David Caspar to Douglass Muir dated November 2, 1999. Document # CSFB-00175025.

unit.”<sup>66</sup> By June 2001, Fiachra O’Driscoll noted that Oakwood “was rated Baa3/BBB- two years ago and is now Caa1/CCC.”<sup>67</sup> In closely monitoring the actions taken by the credit-rating agencies, CSFB knew Oakwood had fallen below investment-grade status in 1999 and continued to be downgraded through 2002 to a level just above default junk bond status.

Through its own information processing, CSFB identified a number of credit issues and concerns with Oakwood in late 1999. In particular, CSFB noted that Oakwood was in a “poor financial condition.”<sup>68</sup> Based on estimates provided by CSFB’s Manufactured Housing analysts, CSFB projected in 2000 that Oakwood would realize a gross operating margin of 26.1 percent, resulting in a net loss of \$1.8 million. CSFB further projected that Oakwood’s EBIT would be about \$15 million in 2000, significantly less than the level needed to cover its anticipated interest expense of \$50 million in that year.<sup>69</sup> In estimating Oakwood’s free cash flows in 2000, which included the repayment of interest expense and a \$125 million revolver, CSFB’s Credit Risk Management (“CRM”) Team predicted negative cash flows ranging from losses of \$75 million to \$110 million.<sup>70</sup>

In addition to obtaining publicly available information about Oakwood, CSFB also had access to private, inside information. As discussed, as part of preparing the securitization prospectuses, Oakwood provided CSFB with inside information, including the historical loss experience of a securitized pool of assets, repossession and foreclosure rates, and the credit quality of each home buyer. CSFB used this information to prepare the prospectuses for securitizations. CSFB was given access to all deal files and closing binders on all retail installment sales contracts (“RICs”) to be included in each securitized asset pool and had access to prior deal files and monthly tracking reports. Furthermore, Oakwood consulted with CSFB as to which customer would be approved to determine how those decisions would affect the market’s perception of the collateral.<sup>71</sup>

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<sup>66</sup> Email from John Herbert to Fiachra O’Driscoll and Susan Menkhaus dated October 30, 2000. Document # CSFB-00170815.

<sup>67</sup> Email from Fiachra O’Driscoll to Phil Jacob dated June 6, 2001. Document # CSFB-00154641.

<sup>68</sup> CSFB Credit Issues/Concerns with Oakwood Homes Corp. Document # CSFB-00250130.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006, p. 45.



## **VII.B In Evaluating Its Own Exposure, CSFB Considered Oakwood a Bankruptcy Risk**

CSFB's internal credit memoranda indicate that CSFB recognized as early as 2000 that Oakwood was a significant bankruptcy risk. Throughout its relationship with Oakwood, CSFB took steps to monitor Oakwood's bankruptcy and insulate itself from it.

### **VII.B.1 Credit Memoranda Suggest Recognition of Oakwood's Financial Condition**

#### **VII.B.1.a Xanthos January 10, 2000 Memorandum**

Even as early as 2000, CSFB's CRM Team anticipated Oakwood's bankruptcy in the foreseeable future. On January 10, 2000, James Xanthos, Vice President of the CSFB CRM Team, issued a memorandum concerning a November 19, 1999, on-site visit to Oakwood. On evaluating Oakwood's financial statements and its 2000 Summary Business Plan, Mr. Xanthos stated in the memorandum that he "strongly recommend" that CSFB not grant a proposed \$75 million Committed Reverse Repurchase Facility for ABS Manufactured Housing Securities.<sup>72</sup> Mr. Xanthos cited a number of reasons to support his recommendation. First, Oakwood maintained a negative cash flow position that did not appear to be reversible in the foreseeable future. Second, Oakwood was in a weak financial condition in light of its excessive inventory and debt-to-equity levels. Third, the manufactured housing industry was severely contracting at the same time that Oakwood needed to sell off a significant portion of its inventory. Fourth, the only source of repayment would have been through the sale of subordinated securities. Finally and significantly, he explicitly stated that Oakwood suffered from "real bankruptcy risk issues."<sup>73</sup>

Mr. Xanthos' memo indicated that the manufactured housing industry was suffering from a significant downturn caused by "inventory levels being too high, excessive retail centers and lenders tightening their underwriting standards."<sup>74</sup> Although the industry had experienced a number of upturns and downturns throughout the past few decades, Mr. Xanthos believed the current downturn was unique, in that it did not stem from macroeconomic factors such as high interest rates, but rather from substantial overcapacity in the industry's retail distribution system. Therefore, determining if or when the industry had bottomed out and whether a recovery in retail profitability would occur would be complicated.

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<sup>72</sup> James Xanthos, CSFB Memorandum dated January 10, 2000. Document # CSFB-00250117.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, Document # CSFB-00250116.

With respect to Oakwood management's 2000 projections and Summary Business Plan, Mr. Xanthos stated that "a review of this plan in light of the company's 1999 performance and the current negative industry economic conditions does not lend me much confidence in Oakwood's projections."<sup>75</sup> He further stated that CSFB's "CRM [Team] was well aware of Oakwood's relationship with [CSFB's] Investment Banking Division but a review of all of the negative factors noted above strongly indicates that CSFB's risks are large and that repayment of [CSFB's] line is unknown due to the company's other debt obligations and lack of cash flow capacity. Oakwood is the weakest company in its industry with very real/immediate bankruptcy risk issues/concerns."<sup>76</sup> As also reflected in the significant drop in Oakwood's stock price at the time, Mr. Xanthos believed Oakwood was in a precarious financial position, one that would be extremely difficult to turn around.

In 1999, Oakwood's earnings before income, taxes, depreciation, and amortization (EBITDA) were well below the level necessary to cover its interest payments, taxes, and expenses. In addition, Oakwood had taken more than \$80 million of special asset valuation charges against its income related to its various loan securitizations over the previous two years.<sup>77</sup> Clearly, Oakwood was in a tenuous state. To improve its weak financial position and meet its operating and investing obligations, Oakwood explored dramatically reducing its excess inventory levels by \$100 million by September 2000. Mr. Xanthos warned that tightened lending and underwriting standards would lead Oakwood to sell its inventories "at unfavorable prices to un-creditworthy borrowers in order to meet inventory reduction goals. If this were to occur, the company's future securitizations (REMIC Interests & Residuals) would be disasters."<sup>78</sup>

When an uncommitted repurchase line was first established in June 1999, CSFB rated Oakwood as a BBB-. Yet CSFB's CRM lowered Oakwood's rating to a B- at the time of Mr. Xanthos' memorandum, which noted that "if Oakwood does declare bankruptcy, CSFB's sole source of repayment would be Oakwood's securitized subordinated securities of which currently there is no strong investor demand and in the event of a bankruptcy there will definitely be no investor demand due to servicing, collections and underwriting concern risks."<sup>79</sup>

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<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, Document # CSFB-00250117.

<sup>77</sup> *Ibid.*, Document # CSFB-00250121.

<sup>78</sup> *Ibid.*, Document # CSFB-00250118.

<sup>79</sup> *Ibid.*, Document # CSFB-00250117.



**VII.B.1.b March 13, 2000, Xanthos Memorandum**

On March 13, 2000, Mr. Xanthos issued another memorandum supporting his initial observations. Again, he stated that Oakwood was facing a real bankruptcy risk:

“On January 10, 2000, I completed a very detailed analysis/review of Oakwood’s financial/cash flow position, industry fundamentals and 2000 business plan outlook. My opinion of Oakwood as well as this industry as a whole has not changed since this review. CSFB is being asked to lend against very illiquid collateral (Oakwood’s ‘BB,’ ‘B’ & Residual securities) to a counterpart that is currently facing real bankruptcy risk concerns. Oakwood’s last four months of operating results/performance as well as industry events have validated my original recommendation/opinion.”<sup>80</sup>

Given that CSFB believed Oakwood was insolvent or would become insolvent in the near future, CSFB structured its transactions with Oakwood such that it was protected in the event of bankruptcy. In particular, Mr. Xanthos’ memorandum points out that Fiachra O’Driscoll, “with CRM’s guidance, [had] crafted a term sheet that attempts to protect CSFB in case of an Oakwood bankruptcy or non-adherence to Bank/CSFB covenants.”<sup>81</sup> Thus, although CSFB believed Oakwood posed a significant bankruptcy risk, it continued to assist Oakwood in its financing needs, such as underwriting securitizations, to earn fees for such business, while protecting itself from the threat of Oakwood’s bankruptcy.

**VII.B.2 Throughout Its Relationship with Oakwood, CSFB Continued to Monitor and Insulate Itself from the Bankruptcy Risks Surrounding Oakwood**

CSFB took several steps to minimize its exposure to Oakwood’s bankruptcy risk. Internal CSFB correspondence reveals that CSFB constantly monitored and evaluated the possibility of an Oakwood bankruptcy. An April 2000 email to Mr. O’Driscoll asked if Mr. O’Driscoll could “get someone to shoot over the latest Oakwood MH deal prospectus? Also, we need to look into the stay period if they go into bankruptcy before we can sell the inventory. We need to make sure all inventory has insurance, etc.”<sup>82</sup>

In a December 2000 presentation to CSFB’s Investment Banking Committee, CSFB’s Asset Finance Group recommended that CSFB provide a \$200 million Revolving Loan Purchase Facility for Oakwood. In particular, the Asset Finance Group noted that “the transaction provides the company with liquidity for its loan originations but is structured with strong protections for

<sup>80</sup> James Xanthos, CSFB Memorandum dated March 13, 2000. Document # CSFB-00250131.

<sup>81</sup> *Ibid.*, Document # CSFB-00250132.

<sup>82</sup> CSFB Email from Kareem Serageldin to Fiachra O’Driscoll dated April 14, 2000. Document # CSFB-00173794.

CSFB.”<sup>83</sup> Such protections insulated CSFB from the numerous investment concerns identified in the presentation. These concerns included Oakwood’s sales remaining soft, its holding of \$77 million in B pieces of securitizations, its rising rate of repossessed homes, its sales compensation being based on volume and not profitability, its high delinquency rates, its inventor levels being the highest in CSFB’s coverage universe, and its balance sheet remaining leveraged.<sup>84</sup>

Likewise, CSFB closely evaluated the possibility of an Oakwood bankruptcy by asking the credit-rating agencies about the rationale behind the downgrades in Oakwood’s credit rating as well as what would happen if Oakwood went bankrupt. As late as February 2002, Fiachra O’Driscoll sent an in-house email stating, “[l]et’s talk to [Moody’s] about what would happen in an Oakwood bankruptcy, because it probably wouldn’t mean liquidation of the company. The Oakwood rating is driven by the effective subordination of the senior unsecured.”<sup>85</sup>

Finally, as I discuss in Section VIII, Oakwood’s lending relationship with Oakwood was conducted through a bankruptcy-remote entity, insulating the bank from Oakwood’s bankruptcy risk. This is another indication that CSFB was aware of and sensitive to Oakwood’s bankruptcy risk, at least with respect to protecting its own interests.

### **VII.C CSFB’s Own Guidelines Require a High Standard of Care to its Clients**

I have been asked to assume that CSFB owed Oakwood and its creditors a fiduciary duty. In addition, CSFB’s own compliance manual requires that CSFB fulfill a high standard of care to its clients. With respect to the principles of conduct its employees were to follow, the manual specifically states that CSFB “be completely open and truthful with customers” and “make no recommendation unless you have a reasonable basis to do so and can substantiate it through publicly available information.”<sup>86</sup> The guidelines state that no recommendation should be made “contrary to a position taken by the CSFB Research Department, or inconsistent with the customer’s investment objectives, financial resources and needs.”<sup>87</sup> In addition, CSFB is “never [to] act in a manner adverse to the best interests of [its] customer. Self-dealing, either at the expense of a customer or CSFB, is strictly prohibited.”<sup>88</sup>

<sup>83</sup> CSFB Presentation to the Investment Banking Committee re: Oakwood Homes Corporation dated December 13, 2000. Document # CSFB-00205989.004.

<sup>84</sup> *Ibid.*, Document # CSFB-00205989.009.

<sup>85</sup> CSFB Email from Fiachra O’Driscoll to Susan Menkhaus dated February 15, 2002. Document # CSFB-00148791.

<sup>86</sup> CSFB Compliance Manual. Section 2 – Principles of Conduct. Document # CSFB-00053080-81.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

Furthermore, with respect to handling customer accounts, CSFB's compliance manual requires adherence to the New York Stock Exchange's ("NYSE") "Know your Customer" rule. This rule mandates "every member organization to learn the essential facts concerning every customer, every account and every order executed on behalf of a customer,"<sup>89</sup> and is intended to protect customers of NYSE members in cases where "investors who suffer losses in securities transactions often allege that their loss resulted from recommendations made by brokers which were unsuitable for them in light of their financial situation and investment objectives."<sup>90</sup> Given CSFB's access to both public and inside information about Oakwood, CSFB was in a position in which it could have known all the essential facts concerning the Company's insolvent financial condition. Yet its recommendations and advice to Oakwood to maintain its operations were inappropriate given that both public and inside information about Oakwood indicated that the Company was in an irreversible spiral to bankruptcy.

#### **VII.D CSFB's Advice to Oakwood Was Inconsistent with Oakwood's Situation, the Information It Had, Its Own Concerns, and the Duties It Owed Oakwood and its Creditors**

The previous sections demonstrate that, given its roles as financial advisor, lender, and underwriter, CSFB had access to public and private information about Oakwood's financial condition and outlook and was concerned about Oakwood's bankruptcy risk. Further, in addition to the fiduciary duty CSFB owed Oakwood and its creditors, its own internal guidelines required that it know its customers and avoid conducting transactions harmful to its clients. Nevertheless, CSFB's advice and conduct with respect to Oakwood were inconsistent with the Company's bleak financial condition and outlook, and thus in violation of the duties it owed.

Although Oakwood was insolvent by the fall of 2001, CSFB continued until August 2002 to provide advice and arrange transactions that did not properly consider the Company's financial condition and outlook and that served to exacerbate its insolvency. No evidence exists that CSFB performed any assessment of the costs and benefits of the securitizations it was leading or conducted any type of analysis regarding the likelihood that Oakwood would be able to turn itself around and pull itself out of its financial predicament. Also, no evidence exists that CSFB considered and assessed the harmful impact on Oakwood's existing creditors when engaging in transactions and providing advice to the Company.

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<sup>89</sup> CSFB Compliance Manual. Section 5- Customer Accounts. Document # CSFB-0053089.

<sup>90</sup> *Ibid.*

In the rest of Section VII.D, I assess the advice CSFB provided to Oakwood. As I discuss, no evidence exists that CSFB suggested filing for bankruptcy as an option for Oakwood until August 2002. In Section VII.E, I demonstrate that CSFB's advice to Oakwood did not duly consider the Company's financial situation. In Section VII.F, I show that the transactions CSFB engaged in with Oakwood were value-destroying and exacerbated the Company's financial problems. In Section VII.G, I explain that CSFB should have advised Oakwood to curtail its operations and should not have enabled the Company to continue to destroy value to its creditors.

#### **VII.D.1 CSFB Presentations to Oakwood Prior to August 2002 Made No Mention of the Fact that Oakwood Should Have Considered Bankruptcy**

As discussed, between 2001 and August 19, 2002, the date CSFB signed a formal advisory agreement with Oakwood, CSFB was acting as a financial advisor to Oakwood. Based on the documents I have examined, CSFB never advised Oakwood of its insolvency or to even consider bankruptcy. Rather, the financial advice CSFB offered Oakwood centered on refinancing its outstanding debt to prolong the business. The objective of the CSFB presentations was to pitch certain financing schemes as a way to continue earning fees. I will now highlight the financial advice CSFB offered Oakwood throughout this period.

##### **VII.D.1.a CSFB Presentation to Oakwood on June 26, 2001**

On June 26, 2001, in a presentation made by CSFB to Oakwood, CSFB claimed that its equity research analysts "believed that signals exist which may point to a bottom for the manufactured housing industry"<sup>91</sup> and that the industry "will rebound."<sup>92</sup> Whereas CSFB's CRM Team believed that there was great uncertainty as to whether the manufactured housing industry had reached a bottom yet, its Investment Banking Division provided Oakwood with information that expressed optimism that industry trends would soon begin to work in the Company's favor. This had the effect of prolonging Oakwood's financing activities rather than encouraging Oakwood to consider bankruptcy in light of its unrecoverable, insolvent financial condition.

Without discussing the option of bankruptcy, CSFB maintained that it was "uniquely suited to advise Oakwood [and that its] restructuring expertise [was] complemented by its #1 position in the High Yield market, strength in the asset-backed market and #1 ranked research."<sup>93</sup> CSFB also provided an update on its view of Oakwood's financial health. In particular, it forecasted the

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<sup>91</sup> CSFB Presentation to Oakwood Homes Corporation dated June 26, 2001. Document # CSFB-00052958.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, Document # CSFB-00052956.

Company's net income to increase from -\$120.9 million in fiscal year 2000, to -\$59.7 million in FY 2001, to -\$23.3 million in FY 2002, and forecasted its EBITDA margin to increase from -0.3% in FY 2000, to 1.9% in FY 2001, to 4.6% in FY 2002. CSFB further claimed Oakwood had made great progress in addressing its capital structure and operating strategy issues and believed more could be accomplished to reduce the capital structure's drag on the business with the following key objectives: reducing the cash interest burden on Oakwood, shortening the time to a positive cash flow, reducing the book value of debt and increasing the common share price, and improving Oakwood's credit profile, thereby facilitating Oakwood's future access to the capital markets.<sup>94</sup>

When Oakwood's senior notes were trading at a combined discount of \$150 million, CSFB recommended three strategies to Oakwood. The first strategy was called the "B-2 Sale and Bond Buyback." CSFB claimed Oakwood could capture a significant portion of the \$150 million discount by monetizing its retained B-2 securities and using the proceeds to quietly buy back and retire some of its outstanding senior notes. CSFB's recommendation was based on the assumption that the industry had bottomed out and the Company's financial condition was going to improve, resulting in an increase in the prices of Oakwood's bonds in the near future. The second strategy was called the "Package Exchange Offer." Under this alternative, CSFB recommended that Oakwood offer its bondholders a package of new debt and common shares in exchange for old notes to capture more of the current bond discount. The third strategy was called "One-Off Equity for Debt Exchange." CSFB claimed that Oakwood could chip away at its debt by quietly offering individual bondholders common shares in exchange for senior notes. CSFB advised Oakwood that individual bondholders would be willing to sell bonds to Oakwood at a pre-negotiated price in exchange for shares based on the stock's average closing price over time.

Rather than advise Oakwood to cut its losses and file for bankruptcy, CSFB encouraged Oakwood to continue to engage in financing activities based on uncertain assumptions that industry-wide and company-specific conditions would improve. This advice only accelerated the Company's insolvent financial position.

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<sup>94</sup> *Ibid.*, Document # CSFB-00052978.

**VII.D.1.b CSFB Presentation to Oakwood on August 9, 2001**

On August 9, 2001, CSFB made another presentation to Oakwood to provide further restructuring alternatives to the Company. Although Oakwood's bankruptcy appeared to be imminent, CSFB stated that "Oakwood has taken the right steps to improve the Company's prospects and should take advantage of the current trading level of its outstanding Notes."<sup>95</sup> Again, CSFB stated that it believed signals existed indicating that the manufactured housing industry had reached its bottom and that Oakwood should aggressively pursue strategies to capitalize on the trading levels of its public bonds.<sup>96</sup>

In stating that recent liquidity transactions had successfully positioned Oakwood to pursue restructuring options, CSFB recommended that the Company proceed with a three-step process. First, CSFB believed Oakwood should proceed with the application of the B-2 and receivables purchase facility proceeds that it proposed in its June 26, 2001, presentation. The second step was for Oakwood to refinance its credit facility with a new facility of \$50 million. The goal of this strategy was to replace the current senior lenders with non-traditional lenders to allow Oakwood greater latitude. Third, CSFB advised Oakwood, as it did in its previous presentation, to further reduce its debt by considering a "Package Exchange Offer" and a "One-off Equity for Debt Exchange."<sup>97</sup> At the end of the presentation, CSFB listed more than one hundred "distressed finance assignments" it had performed for companies in which CSFB acted as a financial advisor to companies suffering from precarious financial and operating conditions.

Interestingly, shortly before making these presentations to Oakwood in 2001, CSFB issued a negative equity research report about the Company on April 26, 2001. In that report, CSFB lowered its fiscal 2001 estimate to a loss of \$2.00 per share "based on the company's latest results and the continued softness in the manufactured housing industry."<sup>98</sup> In addition, the report maintained a Hold rating "given [Oakwood's] recent losses and excessive leverage (51% debt to capital and negative interest coverage) as well as the continued soft industry conditions."<sup>99</sup> While CSFB's equity research analysts were pessimistic about the condition of both Oakwood and the entire manufactured housing industry, CSFB's investment banking division was optimistic about the future prospects of the Company and the industry as a whole as a way to solicit more business from Oakwood.

<sup>95</sup> CSFB Presentation to Oakwood Homes Corporation dated August 9, 2001. Document # CSFB-00052854.

<sup>96</sup> *Ibid.*, Document # CSFB-00052855.

<sup>97</sup> *Ibid.*, Document # CSFB-00052873.

<sup>98</sup> CSFB Equity Research. "Oakwood Homes Corporation." April 26, 2001. Document # CSFB 001555802.

<sup>99</sup> *Ibid.*



**VII.D.1.c CSFB Presentation to Oakwood in March 2002**

In a March 2002 presentation to Oakwood, CSFB advised Oakwood that it could reduce its March 2004 refinancing risk by exchanging the notes coming due in 2004 for a package of new notes and cash. CSFB noted that at that time notes coming due in 2004 had a face value of \$125 million. CSFB recommended that these notes be exchanged for notes with a face value of \$125 million with the same coupon and maturity as its notes coming due in 2009, with the cash portion of the exchange being sized to provide a modest premium to the trading levels of the 2004 notes.<sup>100</sup>

Table 7.2 below provides a summary of the strategic options and alternatives provided by CSFB in its presentations to Oakwood prior to August 2002.

**Table 7.2: Summary of Strategic Options Provided by CSFB**

<b>Presentation Date</b>	<b>Key Company Objectives Identified by CSFB in the Presentation</b>	<b>Strategic Alternatives Provided by CSFB</b>
June 26, 2001	<ul style="list-style-type: none"> <li>▪ Reduce cash interest burden on Oakwood</li> <li>▪ Shorten the time to positive cash flow levels</li> <li>▪ Reduce book value of debt and increase common share price</li> <li>▪ Improve Oakwood's credit profile</li> <li>▪ Reduce distraction/pressure from vendors, customers, and employees due to financial uncertainty</li> </ul>	<ul style="list-style-type: none"> <li>▪ B-2 sale and open-market bond buyback</li> <li>▪ Package exchange offer</li> <li>▪ One-off equity for debt exchange</li> <li>▪ Negotiate a flip-up transaction with a non-traditional senior lender</li> </ul>
August 9, 2001	<ul style="list-style-type: none"> <li>▪ Avoid a going-concern issue</li> <li>▪ Replace current bank group</li> <li>▪ Better utilize assets to raise non-traditional capital</li> <li>▪ Reduce cash interest burden on Company</li> <li>▪ Reduce debt &amp; increase common share price</li> <li>▪ Improve Oakwood's credit profile, thereby facilitating future access to the capital markets</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proceed with application of B-2 and Receivables Purchase Facility Proceeds</li> <li>▪ Refinance credit facility with a new facility of \$50 million or more</li> <li>▪ Consider reducing debt through package exchange offer and one-off equity for debt exchange</li> </ul>
March 2002	Reduce Oakwood's March 2004 refinancing risk by exchanging the 2004 Notes for a package of new notes and cash	<ul style="list-style-type: none"> <li>▪ 2004 notes exchanged for \$125M face value of new notes structured with the same coupon and maturity as 2009 notes</li> <li>▪ Package exchange offer</li> <li>▪ Flip-up transaction</li> </ul>

<sup>100</sup> CSFB Presentation to Oakwood Homes Corporation dated March 2002. Document # CSFB-00033246.



In providing a number of strategic alternatives for Oakwood to pursue to address its capital structure, at no point prior to August 2002 did CSFB advise Oakwood to consider filing for bankruptcy or that industry fundamentals were unlikely to improve soon enough for Oakwood to maintain its operations through the industry downturn. While CSFB's investment banking division failed to discuss the probability of bankruptcy with Oakwood until August 2002, its equity research group concluded that Oakwood posed a significant chance of bankruptcy throughout that time. On June 11, 2001, CSFB released a manufactured housing industry report stating that "[Oakwood] is still operating well in the red and the industry is not reaccelerating at this time."<sup>101</sup> In light of the weakness in Oakwood and the manufactured housing industry, CSFB explicitly asserted in the June 2001 report:

Our probability that Oakwood does not file for bankruptcy is now 50%, compared to a much lower probability six months ago. Therefore, given the financial risk associated with Oakwood, as well as our belief that there may be more short-term downside for the industry and continued soft retail conditions, we are maintaining our Hold rating on the shares.<sup>102</sup>

On September 20, 2001, CSFB released another analyst report that stated verbatim its beliefs about the likelihood of Oakwood having to file for bankruptcy. CSFB still maintained a Hold rating on Oakwood, based again on its opinion that the "probability that Oakwood does not file for bankruptcy is now 50%."<sup>103</sup> While CSFB's investment banking division continued to present strategic options to Oakwood in 2001 and 2002 without discussing the possibility of bankruptcy, CSFB's research analysts contemporaneously published reports reflecting its concern that Oakwood posed a significant probability of bankruptcy. Not only did CSFB's research analysts believe that Oakwood had a fifty percent chance of filing for bankruptcy in June 2001, it believed that the probability of this occurrence had been even higher six months prior. Thus, CSFB's investment banking division continued to engage in activities that exacerbated Oakwood's insolvent financial condition and never advised the Company about the option of filing for bankruptcy until August 2002, even though its research analysts explicitly opined that the Company posed at least a 50 percent chance of filing for bankruptcy throughout 2001.

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<sup>101</sup> CSFB Equity Research. "Manufactured Housing Industry Outlook: Approaching Bottom of Cycle; Not Out of the Woods Yet." June 11, 2001. Document # CSFB-00266476.

<sup>102</sup> *Ibid.*

<sup>103</sup> CSFB Equity Research. "Manufactured Housing- Retail Inventory Update: Second Quarter 2001." September 20, 2001. Document # CSFB 00266317.

**VII.D.2 CSFB's Presentation to Oakwood on August 19, 2002, Marked the First Time CSFB Discussed and Presented Potential Restructuring Alternatives**

Only on August 19, 2002, in a presentation to Oakwood's board of directors, did CSFB advise Oakwood that its best course of action might have been a restructuring. CSFB discussed Oakwood's capital structure and the potential courses of action it felt Oakwood should have considered pursuing to meet its liquidity and capital needs "in light of the sustained losses suffered by Oakwood in the past four years."<sup>104</sup> Contrary to its previous presentations, which stated that the manufactured housing industry had bottomed out and would soon rebound, CSFB stated that "while many thought that the industry had bottomed, there continues to be a downward trend as lenders exit the industry."<sup>105</sup> In addition, the presentation covered Oakwood's current state of operations and its short- and long-term prospects. Of particular concern was the maturity on March 1, 2004, of \$125 million of senior notes and the substantial long-term guarantee obligations associated with the current high level of repossessions.

CSFB noted that Oakwood and the manufacturing industry were operating in an environment characterized by weak conditions overall. Nevertheless, CSFB suggested that many restructuring alternatives were available to Oakwood, including a sale of the Company. CSFB pointed out that the factors threatening Oakwood's short-term liquidity position were \$24 million in annual interest expense, the \$125 million principal amount outstanding on the 7.875 percent senior notes maturing on March 1, 2004, and the servicing fees on the REMIC securities it was receiving, which were inadequate to cover the servicing costs. CSFB stated that the recent trend in default rates and a structural change in the industry would place additional stress on Oakwood and that the guarantees on the principal and interest payments of \$275 million of subordinated B-2 REMIC securities could become a real liability if the current conditions persisted.<sup>106</sup>

During the presentation, CSFB advised that the restructuring timing and path Oakwood chose should be based on its degree of optimism or pessimism as to its ability to grow into its capital structure before exhausting its liquidity. Based on both optimistic and pessimistic views, CSFB offered a number of strategic alternatives. An optimistic view was seen as having a moderate-to-high probability of being able to service and refinance debt capitalization. If this were the case, CSFB advised that Oakwood should take a "wait and see" approach or pursue debt chip-away strategies to take advantage of the distressed trading levels. A negative view was

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<sup>104</sup> CSFB Presentation to Oakwood Board of Directors on August 19, 2002. Document # MNAT006734.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*, Document # MNAT006735.

seen as a low probability of being able to service and refinance debt capitalization. If this were the position, CSFB advised that Oakwood should act early to avoid negotiating from a position of weakness and to maximize value to shareholders; once liquidity decreased to the point that unsecured claimholders know a bankruptcy is imminent, the unsecured claimholders would have more leverage. Acting early would give Oakwood time to negotiate and pursue more than one option.<sup>107</sup> In advising Oakwood on a number of alternatives, including the option of filing for bankruptcy if management did not believe industry conditions were going to improve in the near future, CSFB provided the advice it should have offered Oakwood beginning in 2000.

#### **VII.E The Advice CSFB Provided to Oakwood was Inappropriate**

Throughout 2001 and 2002, CSFB provided Oakwood with prospective business strategies. In its presentations to Oakwood, CSFB offered ideas on how to restructure and refinance its debt. In advising Oakwood, CSFB never discussed what it believed Oakwood's financial condition was or whether Oakwood should have considered bankruptcy, even though CSFB had inside access to Oakwood's management personnel and financial information as a result of the multiple functions it performed for the Company.

The advice CSFB offered Oakwood failed to adequately consider the Company's insolvent financial situation. Mr. Standish has testified that he did not believe CSFB ever understood the financial difficulty Oakwood was in<sup>108</sup> and that CSFB failed to grasp that its strategic alternatives were not feasible. Mr. Standish pointed in particular to CSFB's recommendation to buy back \$125 million of bonds that were to come due in 2004.<sup>109</sup> He also testified that while CSFB was Oakwood's financial advisor, nothing it brought to the table, other than the loan purchase agreement, ever came to fruition.<sup>110</sup>

In addition, Mr. Muir echoed the concerns of Mr. Standish. With respect to the bond buy-back program proposed by CSFB, Mr. Muir also said that CSFB's proposal to refinance the \$125 million was a "neat" plan, but not a useful plan for Oakwood because it would have consumed substantial cash that Oakwood did not have. In addition, Mr. Muir stated that, knowing where he thought Oakwood was headed, he did not think it was a smart idea to trade off

<sup>107</sup> *Ibid.*, Document # MNAT006739.

<sup>108</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006, p. 201.

<sup>109</sup> *Ibid.*, pp. 169-170.

<sup>110</sup> *Ibid.* p. 16.

the small amount of liquidity it did have.<sup>111</sup> Finally, Mr. Standish testified that even after retaining CSFB in August 2002 to help with the impending bankruptcy, CSFB advised Oakwood to delay the bankruptcy filing several times.<sup>112</sup>

#### **VII.F The Actions CSFB Engaged in with Oakwood Destroyed Value and Exacerbated the Company's Insolvent Financial Condition**

The transactions CSFB engaged in with Oakwood enabled Oakwood to continue operating and thus exacerbated the Company's insolvent financial condition and destroyed value. For Oakwood to continue as a going concern, its business model required that it securitize loans it had issued and sell notes to CSFB through the Warehouse Facility to provide the temporary liquidity used to fund the loans. If Oakwood did not engage in these transactions, it would not have been able to sustain its business operations.

Although CSFB had the ability to effectively shut down Oakwood's business by not continuing to provide underwriting activities and a loan purchase facility, it continued to perform these functions. For example, CSFB acted as an underwriter to the Lotus transactions in 2001 and 2002. As a way to enhance the marketability of Oakwood's B-Piece REMIC Certificates, CSFB proposed that Oakwood provide a limited guaranty of principal to an aggregate amount of approximately \$275 million plus interest on certain of the B-Piece REMIC Certificates (collectively, the "B-2 Guarantees").<sup>113</sup> Under the terms of the B-2 Guarantees, the underlying RICs owned by the REMIC trust generated cash to make all required payments on the B-Piece REMIC Certificates. However, if default rates on the underlying mortgages reached a level that resulted in insufficient cash available to service all of the tranches, Oakwood was obligated to pay the difference directly to Berkshire Hathaway, the holders of the B-2 Guarantees.<sup>114</sup> Although economic conditions had been weakening and Oakwood's default rates were rising, CSFB actively engaged as an underwriter for the Lotus securitization. With an increasingly large number of delinquent loans and repossessions, the RICs did not generate enough money to cover all the payments on the B-2 Guarantees and Oakwood had to subsequently pay the difference. As a result of transactions such as Lotus, Oakwood continued to experience losses associated with impairments in the value of its retained interests in the loan securitizations.

<sup>111</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 27, 2006, Vol. 2, p. 232.

<sup>112</sup> Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006, p. 19.

<sup>113</sup> *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*. Objections and Counterclaims. November 13, 2004.

<sup>114</sup> *Ibid.*

Further, not until CSFB's last securitization prior to Oakwood filing for bankruptcy did CSFB disclose its concerns surrounding the Company's financial condition. In the prospectuses CSFB prepared for Oakwood's February Series 2002-A and May Series 2002-B Senior Subordinated Pass-Through Certificates, the recent events that CSFB noted that may adversely affected the return on the certificates centered on the events of September 11, 2001, without mention of Oakwood's precarious financial condition.<sup>115, 116</sup> Only subsequent to its engagement as a financial advisor for restructuring purposes in August 2002 did CSFB include in its August 27, 2002, prospectus for Oakwood's Series 2002-C Senior Subordinated Pass-Through Certificates recent events with respect to Oakwood itself that may have adversely affected the return of the certificates. In particular, the prospectus noted that Oakwood had reported a net loss of \$119 million in the quarter ending June 30, 2002, which included an \$86.5 million charge related to previously securitized loans.<sup>117</sup> Although Oakwood was insolvent in the fall of 2001, CSFB actively engaged in further costly borrowing and financing practices with the Company without disclosing its concern about the financial condition of Oakwood until after it was retained as a financial advisor for restructuring purposes. By continuing to underwrite securities, CSFB enabled Oakwood to incur further losses associated with impairments in the value of its retained interests in the loan securitizations, which effectively drove the Company further into insolvency, destroyed value, and worsened the position of Oakwood's debt holders.

#### **VII.G CSFB Should Have Advised Oakwood to Curtail Operations and Should Not Have Enabled it to Continue to Destroy Value**

Given Oakwood's insolvency, and CSFB's access to information about the Company's financial condition, CSFB's advice to Oakwood should have considered its insolvent position and bleak outlook. Instead of making the recommendation that Oakwood curtail its operations, CSFB advised Oakwood to re-purchase its bonds, which would have consumed liquidity it desperately needed, and continued to securitize its loans and fund its warehouse facility, which enabled it to continue operating, further exacerbating its insolvent financial condition.

CSFB should have been advising Oakwood to make operational changes. For example, the Company could have curtailed its business operations as a way to address its four-year decline in operating income, which continued through 2002. In fact, the Company did curtail its business in December 2002, after it terminated CSFB. In a presentation to the Oakwood Creditors

<sup>115</sup> CSFB Prospectus Supplement to Prospectus dated February 22, 2002. Document # CSFB-00220219.

<sup>116</sup> CSFB Prospectus Supplement to Prospectus dated May 20, 2002. Document # CSFB-00220040.

<sup>117</sup> CSFB Prospectus Supplement to Prospectus dated August 27, 2002. Document # OHCLT-230798.

Committee in December 2002, Oakwood provided details of a rationalization plan (“the Plan”) that sought to address the difficulties surrounding the Company’s operations. The strategy of the Plan was to downsize Oakwood’s operations, reduce fixed operating expenses, and improve the Company’s cash flow and profitability.<sup>118</sup> In particular, the Plan proposed that Oakwood eliminate poorly performing retail stores, increase its focus on wholesales sales, adjust manufacturing capacity to a level in line with expected future sales, and reduce corporate overhead in line with the downsized company.<sup>119</sup> The Plan proposed accomplishing these objectives by eliminating Oakwood’s presence in high-default states as well as closing seventy-four retail centers, five manufacturing plants and its Austin, Texas loan origination office. These actions alone were predicted to increase Oakwood’s 2002 manufacturing and retail operating income by \$30 million.<sup>120</sup> In light of the fact that the downturn in the manufactured housing industry was due in large part to overcapacity and excessive growth by companies like Oakwood, the advice CSFB provided should have entailed operational improvement strategies which focused upon downsizing the Company’s operations. Rather, CSFB proposed alternative financing options which resulted in losses on securitization transactions and further impairment charges on Oakwood’s REMIC valuations.

In addition, similar to providing the optimistic and pessimistic scenarios set forth in its presentation to Oakwood’s board of directors after it was formally retained as a financial advisor for restructuring purposes, CSFB should have provided the Company with certain alternative courses of action if Oakwood’s management believed it could not turn around its insolvent financial condition prior to mid-2002. Throughout its relationship with Oakwood, CSFB should have emphasized that the Company was confronted with both immediate and future liquidity-draining issues. Over the long term, CSFB should have advised that additional stress was going to be placed on the Company if the trends in default rates and industry structural change continued.<sup>121</sup> On further pointing out that Oakwood’s securities were trading at distressed levels, its annual interest expense was high, and the servicing fees it earned on its REMIC securities were insufficient to cover the associated servicing costs, CSFB should have informed Oakwood of its unlikely prospect of improving its capital structure and provided more comprehensive restructuring solutions prior to August 2002 based on the assumption that the downturn in the manufactured housing industry was going to continue.

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<sup>118</sup> Oakwood Homes Corporation. Creditors Committee Meeting dated December 9, 2002. Document # MNAT024088.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*, Document # MNAT024090.

<sup>121</sup> CSFB Presentation to Oakwood Board of Directors dated August 19, 2002. Document # OHCLT-01706.



Further, CSFB should have advised Oakwood that if the Company was pessimistic about the future prospects of its financial and operating conditions, it should not continue to employ a wait-and-see approach or take advantage of the discounted trading levels of its debt. Assuming Oakwood was insolvent in the fall of 2001, CSFB should have recognized and considered early in its relationship with Oakwood that the Company's outstanding indebtedness exceeded its fundamental value and that a sale of the Company or a filing for bankruptcy were options Oakwood should have thoroughly evaluated. Prior to August 2002, CSFB should have been recommending that Oakwood scale back its operations or begin implementing a pre-arranged or pre-packaged bankruptcy strategy. Both of these options would have been in the best interests of the Company and its credit holders. Instead, CSFB's recommendations were centered on its financial incentive to keep Oakwood operational to earn exorbitant fees through its roles as an underwriter, lender, and advisor.

## **VIII. CSFB Had a Financial Incentive to Keep Oakwood Operating**

In this section, I describe the financial incentives CSFB had to keep Oakwood operating and to delay recommending that Oakwood file for bankruptcy. I first describe the fees CSFB was earning, and stood to continue earning, from its relationship with Oakwood. I then explain how CSFB's equity interest in Oakwood allowed it to share in the upside of an Oakwood recovery. Finally, I describe how, despite being a lender to Oakwood, CSFB did not share in the costs of the turnaround attempt because its debt was bankruptcy protected. In short, because of its unique position as a bankruptcy-insulated lender and equity owner, CSFB would enjoy the upside of an Oakwood recovery without facing the consequences of the attempt (that continuing operations was further exacerbating Oakwood's insolvent financial condition), and because of its relationships with Oakwood, CSFB would earn more fees the longer the attempt continued.

### **VIII.A CSFB Stood to Continue Earning Fees for the Services It Provided to Oakwood**

As I described in Section VII, CSFB provided several services and played varying roles over the course of its relationship with Oakwood from the early 1990s through 2002. During this period, CSFB acted as Oakwood's general financial advisor, primary underwriter of its securitization program, secured lender, and as of August 19, 2002, its financial advisor for restructuring purposes. As discussed below, CSFB earned significant fees for providing these services to Oakwood.



**VIII.A.1 Fees Earned by CSFB for Underwriting Oakwood Securitizations**

According to Mr. Muir, CSFB's compensation for its role in underwriting more than 25 securitizations was based on a percentage of the principal balance of the securities. The percentage was negotiated with CSFB, generally with Fiachra O'Driscoll, and the criteria for negotiations were based on benchmarking against other issuers. According to Tom Connors, a managing director of CSFB's Fixed Income Division, CSFB earned fees of two percent,<sup>122</sup> approximately \$2 million, on the first Lotus securitization.<sup>123</sup> All of the securitizations CSFB completed for Oakwood resulted in underwriting fees of at least \$30 million.<sup>124</sup>

The importance of the underwriting fees is highlighted by the pressure placed on CSFB's CRM department to approve certain transactions to ensure continuation of the securitizations. For example, with respect to a \$50 million reverse repurchase facility to finance BBB and BB tranches issued from Oakwood manufactured housing securitizations, a March 2000 memorandum from CSFB's Asset Finance Group to its CRM department stated that "[Oakwood] has been an important client of the asset finance group since 1995 and has generated over \$15 million in revenues in that time. CSFB expects to underwrite a bond offering for the company next week, which will be the first issue the asset finance group has led since the recent management changes ... We urge you to approve this facility, which we strongly support."<sup>125</sup>

**VIII.A.2 Fees Earned by CSFB for Providing Loan Purchase Facility to Oakwood**

In exchange for agreeing to be a lender via the Warehouse Facility, CSFB received warrants in Oakwood that, if exercised, would have been valued at 19.9 percent of Oakwood's common stock. In addition, CSFB was to receive an upfront fee of \$2.5 million and a \$15 million program fee payable over the three-year term of the facility.<sup>126, 127</sup>

<sup>122</sup> Deposition of Tom Connors, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, August 22, 2006, p. 33.

<sup>123</sup> Deposition of Fiachra O'Driscoll, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 30, 2006, Vol. 2, p. 398.

<sup>124</sup> *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*. Objections and Counterclaims. November 13, 2004.

<sup>125</sup> CSFB Memorandum from Joe Donovan, Scott Ulm, and Fiachra O'Driscoll to Credit Risk Management dated March 15, 2000. Document # CSFB-00204186.

<sup>126</sup> CSFB email from Alberto Zonca to Joseph Soave, Josh Borg and Carl Iovine dated Feb. 27, 2001. CSFB-00165521.

<sup>127</sup> CSFB memorandum from Fiachra O'Driscoll and Kareem Serageldin to Jack DiMaio, John Chrystal and Sanjeev Gupta dated May 25, 2001. CSFB-00485359.

**VIII.A.3 Fees Earned by CSFB as Oakwood's Restructuring Financial Advisor**

The advisory agreement presented a complex fee structure for CSFB. Some of the many terms included

- A monthly non-refundable cash fee of \$150,000;
- A non refundable success fee of 1 percent of the aggregate value of a sale transaction;
- A non refundable restructuring transaction fee of 1 percent of:
  - The face amount of the old securities;
  - One third of the face amount of the securitization guarantees; and
  - One third of the face amount of the floor plan guarantees;
- A non refundable fee of \$1,000,000 at the time CSFB notified Oakwood it was prepared to deliver a Fairness Opinion, irrespective of the conclusion reached.<sup>128</sup>

The agreement stated that CSFB was entitled to receive all fees in the event CSFB resigned or was terminated by the Company. Pursuant to the Financial Advisory Agreement, CSFB received more than \$1.8 million in advisory fees from August 19, 2002, through November 15, 2002.<sup>129</sup>

**VIII.A.4 Fees Provided CSFB with a Financial Interest in Oakwood Continuing as a Going Concern**

The securitization and lender fees earned by CSFB provided it with an interest in Oakwood continuing as a going concern. The longer Oakwood continued to operate, the more securitizations it would conduct, and the more times it would draw on the Warehouse Facility. CSFB thus had an incentive to delay recommending that Oakwood file for bankruptcy. As I discuss in Section VIII.C, CSFB was not affected by the costs of Oakwood continuing operations even while insolvent, as the Warehouse Facility was bankruptcy protected.

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<sup>128</sup> Financial advisory services agreement between Oakwood Homes Corporation, Oakwood Acceptance Corporation, Oakwood Mobile Homes, Inc., HBOS Manufacturing, LP. And Credit Suisse First Boston, August 19, 2002.

<sup>129</sup> *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*. Objections and Counterclaims. November 13, 2004.

### **VIII.B CSFB's Equity Interest Provided It with a Financial Interest in Oakwood Continuing Operations**

As discussed, as part of its compensation for taking over the role of lender to the Warehouse Facility from Bank of America, CSFB received warrants in Oakwood valued at 19.9 percent of its common stock. Warrants are essentially call options issued by a firm. When they are issued, the company satisfies the option holder by issuing more of its common stock and selling it to the option holder at the strike price. Had it exercised its warrants, CSFB would have owned a significant amount of equity in Oakwood.

CSFB's equity interest in Oakwood meant that it had an interest in Oakwood pursuing risky courses of action. If Oakwood had declared bankruptcy, CSFB's warrants would have been worth nothing. The warrants would have been worth zero no matter what extent Oakwood's insolvency was. Conversely, if Oakwood had managed a successful turnaround, CSFB's equity interest may have gained positive value. CSFB therefore had an incentive to keep Oakwood as a going concern, even if it harmed Oakwood's creditors. As I describe below, this scenario is a well-known conflict in financial theory. Equity holders are willing to subject the firm to more risk to gain the upside of the return.

#### **VIII.B.1 Agency Conflict between Equity Holders and Debt Holders**

As discussed, CSFB's equity interest in Oakwood caused it to have conflicting interests from those of Oakwood's creditors, leading to an agency problem. An agency problem is a conflict of interest arising among creditors, shareholders, and management because of differing goals in which each stakeholder pursues its own self-interests. When a firm has debt, the interests of equity holders and debt holders differ because these two claimants have different pay-off functions. Shareholder incentives to maximize the value of their shares are not necessarily consistent with the incentives to maximize the total value of debt and equity.<sup>130</sup> For the long-lived firm, as long as it is highly profitable, the interests of the equity holders and debt holders will be aligned. The equity holders effectively hold a call option on the firm with an exercise price equal to the debt. In good times, this option is in the money and the equity holders' interest in the long-term survival of the firm argues for giving them control over the firm. However, as the firm's profits decrease and bankruptcy becomes likely, the equity holders' option moves out of the money, which creates incentives for the equity holders to gamble with the firm's assets at the debt holders' expense.<sup>131</sup>

<sup>130</sup> George G. Kaufman and Randall S. Kroszner, "How Should Financial Institutions and Markets Be Structured, Analysis and Options for Financial System Design," September 27-28, 1996 p. 8.

<sup>131</sup> Janet Mitchell, "Financial Intermediation Theory and the Sources of Value in Structured Finance Markets," Dec. 2004, p. 8.

Equity holders participate in the upside of risky gambles that pay off and do not have to pay all of the losses under limited liability. Conversely, debt holders do not participate in the upside beyond the pre-specified interest and principal payments and may receive nothing if the gamble does not pay off. When a firm faces significant financial difficulties and the market value of the equity holders' investment in a firm is reduced, the equity holders have greater incentives to increase the firm's riskiness because they have less to lose. In contrast, debt holders have precisely the opposite desire because they simply want to protect the value of the debt. Debt holders typically value a risk-averse strategy because that will increase the probability of getting their investment back. However, equity holders are willing to take on very risky projects. If the risky projects succeed, they will get all of the profits themselves, whereas if the projects fail the risk is shared with the debt holders.<sup>132</sup>

In finance theory, the *asset substitution problem* is a well-known agency problem that can be applied in a situation when a firm is facing financial distress.<sup>133</sup> The asset substitution problem occurs when a company is likely to default. In this case, shareholders tend to take on overly risky projects, including projects with a negative net present value ("NPV"). The following example demonstrates this agency conflict.

Assume the firm has a debt payment of \$60 outstanding. The managers of the firm have to make a choice to invest between two distinct projects, A and B, which have the same expected payoff. Moreover, assume that the cash required for the two investment projects is equivalent and will exhaust the total cash of the firm. At the end of the period, the payoff of the selected project is the final amount that shareholders and debt holders obtain. Table 8.1 lists the payoffs and probabilities of each of these projects.

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<sup>132</sup> George G. Kaufman and Randall S. Kroszner, "How Should Financial Institutions and Markets Be Structured, Analysis and Options for Financial System Design," September 27-28, 1996 pp. 8- 9.

<sup>133</sup> Ren-Raw Chen and Hsuan-Chu Lin, "The Structural Agency Problem under Credit Risk," Rutgers Business School, June 2005, p. 4.

**Table 8.1: Illustration of Payoffs and Probabilities of Projects**

Cash Flow	Project A		Project B	
	Unsuccessful	Successful	Unsuccessful	Successful
	Payoff (80% Prob.)	Payoff (20% Prob.)	Payoff (50% Prob.)	Payoff (50% Prob.)
Total Cash Flow	\$0	\$250	\$50	\$50
Cash Flow to Shareholders	\$0	\$190	\$0	\$0
Cash Flow to Debt Holders	\$0	\$60	\$50	\$50

If Project A is successful, the firm will receive \$250 in total cash flow. Of this \$250, \$60 will go to the debt holders to repay the \$60 of outstanding debt payments. The shareholders will receive the remaining \$190. If Project A is not successful, the firm will receive no cash, and both the shareholders and the debt holders will receive no cash. If Project B is successful, the firm will receive \$50 in total cash flow. Because the firm has \$60 of outstanding debt, the entire \$50 will go to pay off the debt holders, leaving the shareholders with \$0. The outcome is the same if Project B is unsuccessful. The firm will receive \$50, which will go to the debt holders to pay off the \$60 in outstanding debt.

For shareholders, Project A offers an expected payoff of \$38 ( $\$0 \times 80\% + \$190 \times 20\%$ ), and Project B offers shareholders an expected payoff of \$0 ( $\$0 \times 50\% + \$0 \times 50\%$ ). Because the Project A's expected payoff is higher than that of Project B, the firm's management will choose to invest in Project A to maximize shareholder value. Even if Project B is successful, the \$50 in total cash flow is not sufficient to pay the debt holders; therefore, the shareholders would have to hand the firm over to the debt holders when the debt matures. Because the payoff is insufficient to cover the full amount of outstanding debt payments, the company would go into default.

For debt holders, Project A offers an expected payoff of \$12 ( $\$0 \times 80\% + \$60 \times 20\%$ ), and Project B offers an expected payoff of \$50 ( $\$50 \times 50\% + \$50 \times 50\%$ ). Therefore, debt holders would prefer that management invest in Project B, which would give them a guaranteed \$50.

This example illustrates the agency conflict of the asset substitution problem. This problem was first raised in 1976, by Jensen and Meckling in their paper "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure" in the *Journal of Financial Economics*. The example demonstrates that when a company is likely to default, shareholders will have nothing to lose and will tend to pursue extremely risky but not necessarily positive NPV investment projects. The shareholders are in essence gambling with the money of the debt holders.<sup>134</sup>

<sup>134</sup> Ren-Row Chen and Hsuan-Chu Lin, "The Structural Agency Problem under Credit Risk," Rutgers Business School, June 2005, p. 25.

### **VIII.B.2 CSFB Had a Conflict of Interest with Oakwood's Debt Holders**

As an equity holder, CSFB's interests were aligned with those of Oakwood's other equity holders and were in conflict with those of Oakwood's creditors. CSFB was aware of the conflict of interest that exists between being an equity holder and a lender.<sup>135</sup> CSFB had an interest in Oakwood continuing operations, even if doing so meant further deterioration in the Company's insolvent financial condition: Its equity interest could not be worth less than \$0, and it could attain positive value if Oakwood managed a successful turnaround. As discussed, equity holders are willing to subject the firm to greater risk to gain the upside of the return. While Oakwood was insolvent in the fall of 2001, CSFB had an incentive to attempt to prolong the business to reap the potential rewards. While filing for Chapter 11 was in the best interest of the debt holders, as an equity holder, CSFB's interest was in deferring the bankruptcy in the hope of turning the Company around. Had Oakwood not continued as a going concern, CSFB not only would have lost out on the securitization and lending fees it was earning (described in Section VIII.A), but it also would have lost the option value provided by its warrants.

### **VIII.C Even Though CSFB Was a Lender, Its Interests Differed from Those of Other Debt Holders**

As discussed, CSFB's interests conflicted with those of Oakwood and its creditors because of the fees it earned as long as Oakwood continued to operate, and because of its equity interest in Oakwood. This was the case despite CSFB's position as a lender to Oakwood. While CSFB acted as a lender to the Company, by providing a credit line through the Warehouse Facility, CSFB's position as an over-secured lender was different from those of other debt holders to Oakwood due to its insulation from the risk of Oakwood bankruptcy.

The Warehouse Facility was structured as a bankruptcy-remote special purpose vehicle ("SPV") securitization credit facility. Oakwood's finance subsidiary, OAC, originated and sold the contracts to a bankruptcy-remote special purpose entity ("SPE") called Ginkgo LLC. The SPE pledged the paper to CSFB under a \$200 million, three-year warehouse line and received funding based on 81 percent of qualifying loan principal balances. Oakwood financed the remaining 19 percent from cash flows and replenished liquidity or paid CSFB through proceeds generated from quarterly asset securitizations. In addition, the notes CSFB purchased were secured by the loans in the OMI Note Trust. Thus, CSFB's credit risk was limited to the credit risk of the Notes and did not include the bankruptcy risk of Oakwood or any of its subsidiaries.<sup>136</sup>

<sup>135</sup> CSFB email from Fiachra O'Driscoll to John Crystal dated May 16, 2000. Document # CSFB-00492624.

<sup>136</sup> CSFB Memorandum dated December 11, 2000. Document # CSFB-00205989.301.



Had Oakwood filed for bankruptcy, CSFB still would have received the full amount of its loan back. As of November 26, 2002, \$148 million was outstanding on the CSFB facility.<sup>137</sup> The corporate credit risk was removed because CSFB had a priority claim on the assets transferred to the SPV. Essentially, CSFB bore no risk with respect to the Warehouse Facility, Mr. Muir stated:

[T]he warehousing facility was extremely well structured in 2001 and it was the most elaborate structure of its kind I had seen in terms of providing protection to lenders. It was well structured from a credit enhancement point of view such that the credit quality of Oakwood should have been largely irrelevant. It was intended to be that way. So from a risk point of view I didn't see that this bankruptcy had any risk to speak of incrementally to the lender.<sup>138</sup>

Thus, CSFB's position was distinguishable from other debt holders in that its interests were secured and insulated from the event of Oakwood bankruptcy. An email from Mr. Felt to Mr. O'Driscoll reveals that the Warehouse Facility was indeed bankruptcy protected. The email related to Judge Walsh's order protecting the Warehouse Facility, stating that

Judge Walsh entered an order approving Oakwood's motion to continue its warehouse operations. The order provides the following protections for the facility: All RICs securitized under the Warehouse Facility Agreements (i) shall be deemed sold to the Warehouse Trust free and clear of all liens, claims charges, encumbrances and adverse claims attaching to the proceeds of such sales, (ii) shall not constitute property of any of the Debtors' bankruptcy estates under section 541 of the Bankruptcy Code, and (iii) shall not be subject to the automatic stay imposed by Section 362(a) of the Bankruptcy Code or by any other relief issued under Section 105 of the Bankruptcy Code.<sup>139</sup>

Therefore, CSFB's exposure as a lender was bankruptcy remote and limited to the assets owned by the Trust. Although aware of the negative outlook for Oakwood, CSFB was concerned with earning fees while protecting its own interests. As CSFB stated, the Warehouse Facility provided "attractive economics [to CSFB], regardless of [Oakwood's] business outcome. CSFB [received] a program fee of 7.5% (\$15 million) payable over three years. If [Oakwood] defaults, the program fee payment [was] secured by assets purchased."<sup>140</sup> CSFB also received eight-year warrants for 19.9 percent of the diluted common shares of Oakwood. Thus, there was "considerable upside to CSFB, even in a default scenario."<sup>141</sup>

<sup>137</sup> Foothill Inter-Office Memorandum. Oakwood Homes Corporation dated November 26, 2002. Document # F-657.

<sup>138</sup> Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006, p. 188-9.

<sup>139</sup> Email from Jared Felt to Fiachra O'Driscoll. Document # CSFB-00512527.

<sup>140</sup> CSFB Materials Prepared for Discussion. Oakwood Homes Corp. dated December 18, 2000. Document # CSFB-00141065.

<sup>141</sup> *Ibid.*



As discussed, CSFB effectively positioned itself as a significant equity holder in Oakwood. Although CSFB acted as a lender to Oakwood, its interests differed from those of other debt holders in light of the protections CSFB had in place that essentially limited its exposure to Oakwood in the event of bankruptcy. Thus, CSFB had an interest in only one side of the agency conflict – that is, the equity holders' side. Until August 2002, no evidence exists which reveals that CSFB ever considered the interests of Oakwood's creditors. In light of the agency conflicts that arise between equity holders and debt holders, CSFB had nothing to lose by helping to keep Oakwood operational, and in fact had a financial incentive to continue to earn fees from the services it provided to Oakwood.

#### **VIII.D Conclusion Regarding CSFB's Incentives**

CSFB had a financial interest in Oakwood continuing its operations. First, CSFB stood to continue earning securitization and lending fees as long as Oakwood continued to borrow money and conduct securitizations to fund its operations. Second, CSFB's warrants in Oakwood would attain value if Oakwood staged a recovery. At the same time, CSFB was insulated from the costs of Oakwood continuing operations. Its warrants could not be worth less than \$0, and its position as lender to Oakwood differed from that of Oakwood's other creditors because its exposure to the client was insulated from the threat of Oakwood bankruptcy.

Dated: April 30, 2007

A black and white image of a handwritten signature, likely of Alan C. Shapiro, written in cursive over a horizontal line.

Alan C. Shapiro, Ph.D.

**Appendix A: Curriculum Vita of Alan C. Shapiro, Ph.D.**

## **RESUME AND PRIOR TESTIMONY OF ALAN C. SHAPIRO**

Marshall School of Business  
University of Southern California  
Los Angeles, California 90089-1427

### **EDUCATION**

Ph. D. Economics, Carnegie Mellon University, 1971  
B.A. Mathematics, Rice University, 1967

### **CURRENT POSITION**

1991-Present: Ivadelle and Theodore Johnson Professor of Banking and Finance,  
Marshall School of Business, University of Southern California

### **PAST POSITIONS**

1993-1997: Chairman, Department of Finance and Business Economics, Marshall  
School of Business, University of Southern California

1984-1990: Professor of Finance and Business Economics, Marshall School of  
Business, University of Southern California

1986-1987: Chairman, Department of Finance and Business Economics, Marshall  
School of Business, University of Southern California

1978-1984: Associate Professor of Finance and Business Economics, Marshall School  
of Business, University of Southern California

1981-1984: Director of Research, International Business Education and Research  
(IBEAR) program, University of Southern California

1971-1978: Assistant Professor, The Wharton School, University of Pennsylvania

1975-1978: Director, Research Group in Multinational Financial Management, The  
Wharton School, University of Pennsylvania

1968-1971: Instructor, Graduate School of Industrial Administration, Carnegie Mellon  
University

### **VISITING APPOINTMENTS**

Spring 2003: U.S. Naval Academy

Spring 1990: Yale School of Management, Yale University

1984-1985: Anderson Graduate School of Management, UCLA

Spring 1981: Faculty of Commerce, University of British Columbia

Spring 1977: Stockholm School of Economics

#### **TEACHING EXPERIENCE**

University of Southern California (1978-present): Corporate finance, corporate financial strategy, international financial management, international economics, macroeconomics, political economy, microeconomics.

U.S. Naval Academy (visiting professor, Spring 2003): Micro- and macroeconomics

Yale School of Management (visiting professor, Spring 1990): Corporate financial strategy, international financial management.

UCLA (visiting professor, 1984-1985): International financial management, international economics, corporate finance.

University of British Columbia (visiting professor, Spring 1981): International finance, international financial management.

Stockholm School of Economics (visiting professor, Spring 1977): International financial management.

University of Hawaii (visiting professor, Summer 1976, 1978): Corporate finance.

Wharton School (1971-1978): Multinational enterprise, international financial management, international banking, multinational enterprise policy, corporate finance, various research seminars (e.g., management science for the multinational enterprise, international cash management, risk management in international banking).

Carnegie Mellon University (1968-1971): Microeconomics, macroeconomics, statistical decision theory, industrial administration.

#### **EXECUTIVE PROGRAMS: UNIVERSITIES**

University of Southern California Executive Programs: Global macroeconomics, international finance and economics, corporate finance.

USC Advanced Management Program in Telecommunications: Value-based management, merger and acquisition analysis.

UC Berkeley Advanced Executive Program: Corporate strategy and finance, international finance.

Yale Executive Management Program: Corporate finance, international finance, global macroeconomics.

University of Hawaii (Pacific Asian Management Institute): Country risk analysis, global strategy, international financial markets.

UCLA Executive Programs: International finance, corporate finance.

UCLA: Medical Marketing Program.

UCLA/ITESM: Corporate financial strategy, international finance (for Mexican executives).

Wharton School Executive Programs: International financial management, international banking, international business strategy.

Columbia University Executive Programs: International finance, corporate finance.

University of Melbourne: Value-based management.

University of Washington (Center for the Study of Banking and Financial Markets): International portfolio diversification.

Banff School of Advanced Management: International business and the world economy.

Stockholm School of Economics: International financial management, managing headquarters-subsidiary relations.

Graduate School of Credit and Financial Management (Tuck School, London Business School): Strategy of multinational enterprise.

#### **EXECUTIVE PROGRAMS: IN-HOUSE CORPORATE AND BANKS**

CRL Industries: Implications of shareholder value for managing a diverse business.

Korn/Ferry International: Implications of shareholder value and globalization for executives.

Bank of America: Key trends for commercial banks, coping with a competitive environment.

Times Mirror Corporation: Economic value added.

Kidder-Peabody: Global asset allocation and the risk-reward trade-off in international investing.

Aetna: Value-based management, international finance and economics.

IBM: Macroeconomic environment, corporate finance and corporate strategy.

Knight-Ridder: Value-based management.

Glaxo: Creating shareholder value.

TRW: Finance function and value creation.

Abbott Labs: Value-based management.

Dow Chemical: Creating shareholder value.

Merck: Corporate and international finance.

Southwestern Bell: Corporate finance and building shareowner value.

General Motors: Analyzing foreign operations and global supplier relationships.

Philip Morris: Global financial strategy and structure.

Citicorp Institute for Global Finance: International finance, corporate finance.

Citicorp Worldwide Personal Banking: International portfolio investment.

Andersen Consulting: Value-based management.

Bank of America Training Programs: International finance, advanced corporate finance, international economics, global funds management.

British Petroleum (Australia): Value-based management.

United States Department of Commerce (Asia/Pacific Business Outlook 1988-1991): International finance, foreign exchange risk management.

Capital Group: Corporate finance.

Alcar: International finance.

Business International Corporation: Foreign exchange risk management.

COPARMEX Executive Program (Mexico City): Managerial finance.

American Management Association: International financial management.

Korea Development Finance Corporation (Seoul): The role of financial institutions in economic development.

Training programs on the use of expert witnesses for Hastings College of Advocacy; O'Melveny & Myers; and Brobeck, Phleger & Harrison.

## **SERVICE TO SCHOLARLY JOURNALS AND ORGANIZATIONS**

### Editorial Positions

Associate Editor, *International Trade Journal*  
Associate Editor, *Journal of Financial Research*  
Associate Editor, *Journal of International Financial Management and Accounting*  
Associate Editor, *Journal of Applied Corporate Finance*  
Associate Editor, *Global Finance Journal*

### Boards of Directors

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<i>National Science Foundation</i>	<i>Journal of Financial Services Research</i>
<i>Journal of International Money and Finance</i>	

## **PUBLICATIONS: BOOKS**

*Multinational Financial Management*, John Wiley & Sons, 8<sup>th</sup> ed.

*Foundations of Multinational Financial Management*, John Wiley & Sons, 5<sup>th</sup> ed., 2005.

*Modern Corporate Finance: An Interdisciplinary Approach to Value Creation* (Prentice-Hall, 2000, coauthored with Sheldon Balbirer).

*Modern Corporate Finance*, Macmillan, 1990.

*International Corporate Finance*, Ballinger, 1989.

*Capital Budgeting and Investment Analysis*, Prentice-Hall, 2005.

## **PUBLICATIONS: MONOGRAPHS**

*International Corporate Finance: A Survey and Synthesis*, Financial Management Association, 1986.



*Foreign Exchange Risk Management*, American Management Association, 1978.

**PUBLICATIONS: ARTICLES**

"The Private Company Discount" (with John Koeplin and Atulya Sarin), *Journal of Applied Corporate Finance*, Winter 2000.

"Tobin's q and the Relation Between Accounting ROI and Economic Return" (with Wayne Landsman), *Journal of Accounting, Auditing and Finance*, Winter 1995.

"Competitive Implications of Europe 1992," *European Business Journal*, Fall 1991.

"The Economic Import of Europe 1992," *Journal of Applied Corporate Finance*, Winter 1991.

Reprinted in *Studies in International Corporate Finance and Governance Systems: A Comparison of the U.S., Japan, & Europe* (Editor, Donald H. Chew), Oxford University Press, 1997.

"Corporate Stakeholders and Corporate Responsibility," *USC Business*, Summer 1991.

"When Hedging Makes Sense in Managing Foreign Exchange Risk," *Journal of European Business*, March/April 1990.

"When Hedging Makes Sense: Managing Foreign Exchange Risk," *Corporate Controller*, March/April 1990.

"The Mispricing of U.S. Treasury Bonds: A Case Study" (with Bradford Cornell), *Review of Financial Studies*, December 1989.

"Why the Budget Deficit Does Not Matter," *Journal of Applied Corporate Finance*, Fall 1989.

"Cross-Sectional Regularities in the Reaction of Stock Prices to Bond Rating Changes" (with Brad Cornell and Wayne Landsman), *Journal of Accounting, Auditing and Finance*, Fall 1989.

"Ensure Future Access to Capital...", Comments on "The Case of the Expensive Expansion," *Harvard Business Review*, January-February 1989.

"Why the Trade Deficit Does Not Matter," *Journal of Applied Corporate Finance*, Spring 1989.

"Financing Corporate Growth" (with Bradford Cornell), *Journal of Applied Corporate Finance*, Summer 1988.

Reprinted in *The New Corporate Finance: Where Theory Meets Practice* (editor, Donald Chew), McGraw Hill, 1993.

"A Market-Based Test of the Effect of Monetary Policy" (with Maurice Levi), *Economic Inquiry*, April 1987.

"Corporate Stakeholders and Corporate Finance" (with Bradford Cornell), *Financial Management*, April 1987.

"Taxes and Stock Return Seasonality: Evidence from the London Stock Exchange" (with Marc Reinganum), *Journal of Business*, April 1987.

"Multinational Corporations and National Regulation: An Economic Audit," *Managerial Finance*, January 1987.

"Guidelines for Long-Term Financing Strategy," *Midland Corporate Finance Journal*, Winter 1986.

Reprinted in *The Revolution in Corporate Finance* (editors, Joel Stern and Donald Chew), Basil Blackwell, 1998.

"The Impact on Bank Stock Prices of Regulatory Responses to the International Debt Crisis" (with Brad Cornell and Wayne Landsman), *Journal of Banking and Finance*, Special supplement, 1986.

"International Banking and Country Risk Analysis," *Midland Corporate Finance Journal*, Fall 1986.

Reprinted in *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"Systematic Risk, Total Risk, and Size as Determinants of Stock Market Returns" (with Josef Lakonishok), *Journal of Banking and Finance*, March 1986.

"The Reaction of Bank Stock Prices to the International Debt Crisis" (with Bradford Cornell), *Journal of Banking and Finance*, March 1986.

"Interest Rates and Exchange Rates: Some New Empirical Results" (with Bradford Cornell), *Journal of International Money and Finance*, December 1985.

"Currency Risk and Country Risk in International Banking," *Journal of Finance*, July 1985.

"An Integrated Approach to Corporate Risk Management" (with Sheridan Titman), *Midland Corporate Finance Journal*, Summer 1985.

Reprinted in *The Revolution in Corporate Finance* (editors, Joel Stern and Donald Chew), Basil Blackwell, 1998; and, *Corporate Risk Management* (editors, Gregory Brown and Donald Chew), Risk Books, 2000.

"Corporate Strategy and the Capital Budgeting Decision," *Midland Corporate Finance Journal*, Spring 1985.

Reprinted in *The Revolution in Corporate Finance* (editors, Joel Stern and Donald Chew), Basil Blackwell, 1998; and *The New Corporate Finance: Where Theory Meets Practice* (editor, Donald Chew), McGraw Hill, 1993.

"Currency Risk and Relative Price Risk," *Journal of Financial and Quantitative Analysis*, December 1984.

"Guidelines for Global Financing Choices" (with Donald Lessard), *Midland Corporate Finance Journal*, Winter 1984.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), John Wiley, 1984; and *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"A Practical Method of Assessing Foreign Exchange Risk" (with C. Kent Garner), *Midland Corporate Finance Journal*, Fall 1984.

Reprinted in *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"Stock Returns, Beta, Variance, and Size: An Empirical Analysis" (with Josef Lakonishok), *Financial Analysts Journal*, July/August 1984.

"The Impact of Taxation on the Currency-of-Denomination Decision for Long-Term Foreign Borrowing and Lending," *Journal of International Business Studies*, Spring/Summer 1984.

"The Evaluation and Control of Foreign Affiliates," *Midland Corporate Finance Journal*, Spring 1984.

Reprinted in *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"What Does Purchasing Power Parity Mean?" *Journal of International Money and Finance*, December 1983.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), John Wiley, 1984.

"Managing Foreign Exchange Risk" (with Bradford Cornell), *Midland Corporate Finance Journal*, Fall 1983.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), John Wiley, 1984; and *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"Nominal Contracting in a World of Uncertainty," *Journal of Banking and Finance*, March 1983.

"International Capital Budgeting," *Midland Corporate Finance Journal*, Spring 1983.

Reprinted in *New Developments in International Finance* (Editors, Joel Stern and Donald Chew), Basil Blackwell, 1988.

"Risk in International Banking," *Journal of Financial and Quantitative Analysis*, December 1982.

"The Management of Political Risk," *Columbia Journal of World Business*, Fall 1981.

"In Defense of the Traditional Weighted Average Cost of Capital as a Cutoff Rate," *Financial Management*, Summer 1979.

"Evaluation and Control of Foreign Operations," *International Journal of Accounting*, Fall 1978.

Reprinted in *International Accounting and Transnational Decisions* (Editor, S. J. Gray), Butterworth, 1983.

"Payments Netting in International Cash Management," *Journal of International Business Studies*, Fall 1978.

"Financial Structure and Cost of Capital in the Multinational Enterprise," *Journal of Financial and Quantitative Analysis*, June 1978.

Reprinted in *International Accounting and Transnational Decisions* (Editor, S. J. Gray), Butterworth, 1983.

"Capital Budgeting for the Multinational Corporation," *Financial Management*, Spring 1978.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), Warren, Gorham & Lamont, 1979; *International Finance* (Editors, Gerald D. Gay and Robert W. Kolb), Robert F. Dame, 1983; *International Accounting and Transnational Decision* (Editor, S.J. Gray), Butterworth, 1983; and *International Business Classics* (Editors, James C. Baker, John Ryans, Jr., and Donald G. Howard), Lexington Books, 1988.

"Defining Exchange Risk," *Journal of Business*, January 1977.

"International Cash Management--The Determination of Multicurrency Cash Balances," *Journal of Financial and Quantitative Analysis*, December 1976.

"Managing Exchange Risks in a Floating World" (with David P. Rutenberg), *Financial Management*, Summer 1976.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), Warren, Gorham & Lamont, 1979.

"Incentive Systems and the Implementation of Management Science," *Interfaces*, November

1976.

"Financial Goals and Debt Ratio Determinants: A Survey of Practice in Five Countries" (with an international consortium of eight others), *Financial Management*, Autumn 1975.

"Evaluating Financing Costs for Multinational Subsidiaries," *Journal of International Business Studies*, Fall 1975.

Reprinted in *International Financial Management* (Editor, Donald R. Lessard), Warren, Gorham & Lamont, 1979.

"Exchange Rate Changes, Inflation, and the Value of the Multinational Corporation," *Journal of Finance*, May 1975.

"When to Hedge Against Devaluation" (with David P. Rutenberg), *Management Science*, August 1974.

Reprinted in *International Capital Markets* (Editors, E. J. Elton and M. J. Gruber), Elsevier, 1975.

"Analyzing Quantitative Models" (with J. Scott Armstrong), *Journal of Marketing*, April 1974.

"Optimal Inventory and Credit-Granting Strategies Under Inflation and Devaluation," *Journal of Financial and Quantitative Analysis*, January 1973.

Reprinted in *Management of Working Capital* (Editor, Keith V. Smith), West Publishing Co., 1974; and *International Capital Markets* (Editors, Edwin J. Elton and Martin J. Gruber), Elsevier, 1975.

#### **PUBLICATIONS: BOOK CHAPTERS**

"Analysis of the Orange County Disaster," *The Growth of Risk Management - A History*, Risk Books, 2003.

"Capital Structure and Financial Strategy," *Handbook of Modern Finance* (Editor, Dennis E. Logue), 4<sup>th</sup> ed., Boston: Warren Gorham Lamont, 2002.

"Innovative Financial Strategies for Biotechnology Ventures" (with Paul J.H. Schoemaker), *Wharton on Managing Emerging Technologies*, edited by George Day and Paul Schoemaker, 2000.

"Leveraged Buyouts," *The New Palgrave Dictionary of Money and Finance* (Editor, Peter Newman), London: Macmillan Press Reference Books, 1993.

"Financial Decisions for Multinational Enterprises" (with Richard K. Goeltz), *Financial Handbook* (Edward I. Altman editor) 6th ed., New York: John Wiley & Sons, 1986.

"Management Science Models for Multicurrency Cash Management," in *International*

*Business Systems Perspectives* (Editor, C. G. Alexandrides), Georgia State University, 1973.

#### **WORKING PAPERS**

"Value of Corporate Control: Some International Evidence" (with Paul Hanouna and Atulya Sarin), November 2003, revised.

"Corporate Strategy and Investment Analysis," March 1996.

"Dividend Policy in a Restructuring Company: The Case of Pacific Enterprises," (with Lloyd Levitin and Randy Westerfield), May 1995.

"Systematic Differences in Real Interest Rates Internationally."

"Why Partial Deregulation Is Not Sustainable: Lessons from Ten Industries," May 1992.

"Exchange Rate Volatility and the Value of the Option to Introduce a New Product," (with Warren Bailey, Cornell), April 1991, revised November 1997.

"Economic Analysis of Transfer Pricing for Tax Purposes," a report prepared at the request of the American Law Institute, July 1986.

#### **CONSULTING AND PROFESSIONAL ACTIVITIES**

Member, Board of Directors, Chairman of Audit Committee, Chairman of Compensation Committee, Advanced Cell Technology, Inc.

Consultant, Royal Bank of Canada: Assessing the economic rationale of transactions with Enron.

Consultant, IRS: Analyzing the value of intangible assets for a pharmaceutical company, including drug patents, regulatory skills, and marketing and distribution channels.

Consultant, AT&T: Analyzing the use and importance of most-favored nation ("MFN") provisions in contracts.

Consultant, U.S. Department of Justice: Analyzing the appropriate capital structure for a financial holding company and estimating the cost of financing a thrift absent FIRREA.

Member, Board of Directors, Chairman of Compensation Committee, member and past Chairman of Audit Committee, Remington Oil and Gas Corporation

Trustee, member of Audit Committee, the Pacific Corporate Group Private Equity Fund.

Consultant, Telstra: Estimating the cost of capital for Telstra overall and for each of its divisions.

Member, Advisory Board, LEK Consulting.

Consultant, Anheuser-Busch: Estimating the cost of capital for its wholesale distributors.

Consultant, Northrop Grumman: Participated with members of the NGC shareholder value team to help facilitate the process of institutionalizing shareholder value throughout the organization.

Consultant, Time Warner: Estimating the cost of capital for Time Warner overall and for each of its business units.

Consultant, Southwestern Bell: Estimating the cost of capital for domestic and foreign ventures and projecting their future cash flows. Assessing the consequences of deregulation.

North Broken Hill: Estimating the weighted average cost of capital for their Australian operations.

Consultant, Caltex Petroleum Company: Estimating the cost of capital for its various foreign operations, measuring corporate exposure to foreign exchange risk, increasing shareholder value.

Consultant, Pacific Enterprises: Determining a new dividend policy, the appropriateness of a new equity issue, and the appropriateness of a quasi-reorganization; assessing the likely consequences of a performance-based ratemaking system on SoCalGas' risks and returns.

Director, Lincoln Savings and Loan Association: Appointed by FDIC *after* seizure.

Consultant, U.S. Department of Energy: Estimating the cost of capital for utilities and energy projects.

Consultant, Mary Kay Cosmetics: Assessing the value of foreign investments and alternative foreign market entry strategies.

Consultant, Royal Bank of Canada: Assessing competitive entry strategies in the U.S. corporate and institutional banking markets.

Consultant, Meyer Interest Rate Survey: Valuing a privately-held company.

Consultant, NCR: Measuring corporate exposure to exchange risk.

Consultant, Federal Home Loan Bank: Assessing the investment policies and practices of Lincoln Savings and Loan and CenTrust Bank.



Consultant, Texas Instruments: Estimating the competitive effects of cost of capital differentials between the United States and Japan.

Consultant, Arco Chemical: Measuring corporate foreign exchange risk and integrating its management with overall corporate strategy.

Management Analysis Center (MAC) faculty associate.

Consultant, Computer Sciences Corporation: International treasury management.

Consultant, GTE Microcircuits Division: Corporate strategy.

Consultant, Vulcan Materials Co.: Measuring corporate exposure to foreign exchange risk.

Consultant, OKC Corporation: Valuation of an oil refinery.

Consultant, CKB Associates: Financial, marketing, strategic and economic analyses of a new cement plant.

Member, Board of Directors, OKC Corporation (1979-1981).

Consultant, Wells Fargo Bank: Measuring the riskiness of an international loan portfolio.

Consultant, Flying Tiger Line: Analyzing the impact of exchange rate changes on Pacific air freight business; evaluating return on investment in the international airline industry.

Consultant, Business International Corporation: International cash management; management of blocked funds.

Consultant, Scott Paper Co.: Determining the multinational cost of capital; factoring political and economic risks into foreign investment analyses.

Consultant, Citibank: Multinational financial management; design of a model for management of exposure and short-term financing.

Consultant, Fidelco Associates: Financial management.

Consultant, Carborundum Corporation: Analysis of joint ventures with Hungary and Poland.

Consultant, Maxwell House Division, General Food Corporation: Developing models for long-range marketing strategies.

Consultant, University of Pennsylvania Medical Center: Studying the economic impact of a Health Maintenance Organization on the Medical Center; estimating demand for a new group practice to be located at Graduate Hospital.

Financial columnist: Business International Money Reports.

#### **AWARDS AND SPECIAL RECOGNITION**

My article (with Bradford Cornell), "Corporate Stakeholders and Corporate Finance," April 1987, was listed as the most frequently-cited article published in *Financial Management* since 1985 and one of the 25 most frequently-cited articles published in the history of *Financial Management*.

Cited by *Business Week* as one of the ten most in-demand professors for in-house corporate executive programs: 1993

Ranked as one of the most prolific contributors to international business literature in a study published in the *Journal of International Business Studies*: 1991

Voted the Outstanding Teacher in USC's Executive MBA program: 1991

Nominated as Outstanding Teacher, Yale School of Management: 1990

Voted Best Teacher in the MSMIE program, School of Business Administration, USC: 1989

Cited in *Financial Management* as one of "100 Most Prolific Authors in Finance": 1988

Winner (with Bradford Cornell) First Financial Management Association Distinguished Applied Research Award for the article "Corporate Stakeholders and Corporate Finance": 1987

Second place in dissertation contest sponsored by Association for Education in International Business: 1971

#### **SPEECHES**

Elar Partners: "Globalization of Capital Markets and Its Impact on the U.S. Economy and the Insurance Industry."

Post-EMBA Program: "The Privatization of Latin America."

Dentsu (Tokyo): "Multinationalization of Japanese firms."

Financial Executives Institute: "Why the Budget Deficit Doesn't Matter."

TRW: "The Economic Future of the United States: Myths and Reality."

Fred James Corporation: "Economic Prospects for Los Angeles."

Wharton Club of Los Angeles: "Why the Trade Deficit Doesn't Matter."

Beverly Hills B'nai B'rith: "U.S. Economic Prospects for the 1990s."

Young Presidents Organization: "Why the Twin Deficits Don't Matter."

Republican Women's Club: "Mexico's Economy: Now and in the Future."

Young President's Organization: "Mergers and Acquisitions."

USC Executive MBA Alumni Association: "Clintonomics or Clintonitis."

Young President's Organization: "Why the Twin Deficits Don't Matter... and What Does."

USC MBA Alumni Association: "Global Restructuring of Companies, Governments, and Nations: Causes and Consequences"

USC Orange County Advisory Council: "The Asian Financial Crisis"

Los Angeles Society of Financial Analysts: "Globalization of Financial Markets"

#### **EXPERT WITNESSING**

1. Massachusetts Department of Revenue ("MDR"): Analyzing the business purposes and the economic substance of the mortgage REITs established by Fleet Bank.
2. Hopkins & Carley: Assessing the effects of an error in the accounting treatment of stock options on corporate behavior and the economic consequences and costs of that behavior.
3. Ruby and Schofield: Assessing the economic validity of damage claims associated with alleged misappropriation of intellectual property brought against Bank of America and determining the appropriate way to estimate any such damages.
4. New York State Department of Taxation and Finance: Analyzing the arm's length nature of transactions between Hallmark Marketing Corporation and its parent, Hallmark Cards, Inc. Key issues included the identification of intangible assets, the allocation of excess returns among various intangible assets, the basis of fair market value of an intangible asset, and the nature of intangible asset ownership.
5. Massachusetts Department of Revenue ("MDR"): Analyzing the business purposes and the economic substance of the intellectual property transactions of TJX Companies, Inc. and its

wholly-owned subsidiaries, T.J. Maxx, Chadwick's of Boston, and Marshalls, Inc., with its Nevada investment holding companies (NCs), as well as the validity of TJX's use of its promissory notes in conjunction with cash transfers from its NCs back to the parent.

6. O'Melveny & Myers: Analyzing whether the disclosures made by AMERCO regarding the consolidation of SAC Holdings had an impact on the availability and cost to AMERCO of raising debt capital. A key issue is how consolidation of a special purpose entity (SPE) would affect a company's creditworthiness insofar as it did not affect forecasts of the company's cash flows, asset values, or claims against its assets as opposed to the effects of adverse financial market conditions and the poor operating performance of its different businesses.
7. IRS: Estimating the fair market value of the common stock of MB Parent on July 31, 1998, immediately after the merger of MergerSub with and into Matthew Bender & Company, Inc. The key issue was the appropriate discount for lack of control to be applied to MB Parent's Member interest in Eagle I, LLC, which held \$1.375 billion of cash at July 31, 1998. Prior to the transaction, TMD owned all the outstanding stock of Bender. TMD, in turn, was wholly owned by Times Mirror Company.
8. IRS: Estimating the value of (1) the stock of Santa Monica Holdings Corporation ("SMHC") contributed by Credit Lyonnais International Services ("CLIS") to Santa Monica Pictures, LLC ("SMP") at the time it was contributed to SMP, (2) the \$79,912,955 of indebtedness owed by MGM Group Holdings Corporation to CLIS and \$974,296,600 of indebtedness owed by MGM Group Holdings to Generale Bank Nederland at the time it was contributed to SMP, (3) SMHC's interest in Carolco Pictures, Inc. at the time SMHC's stock was contributed to SMP, and (4) the net operating losses incurred by SMHC between December 31, 1992 and December 11, 1996.
9. Sachnoff & Weaver: Opining on whether Chase Securities, Inc. did what a reasonable or reasonably prudent investment banker would have done in its capacity as a placement agent, and later as initial purchaser, of securities in transactions sponsored by Commercial Financial Services, Inc. and on whether the statements and omissions made in connection with the sales of these securities placed and offered by Chase were material and had an effect on the price of the securities and the willingness of the investors to purchase these securities.
10. White & Case: Estimating the fair market value of a cash flow stream in an agreement between Liberty Digital and TCI and whether a multiples approach was a suitable valuation methodology.
11. U.S. Department of Justice: Estimating the damages suffered by Bluebonnet Savings Bank, FSB resulting from the elimination by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of forbearances Bluebonnet had received relating to the payment of dividends, the maintenance of capital, and the inclusion of subordinated debt in the calculation of its regulatory capital and whether all of the necessary capital contributions

could have been funded with straight debt.

12. IRS: Estimating the value of a subordinated note, with various terms and conditions, issued by a company to an affiliated company in connection with a cross-border acquisition.
13. Prongay & Borderud: Analyzing whether the sale of G&L Realty to its senior executives took place at fair market value and whether proper corporate governance procedures were followed by G&L's board of directors in selling the company to insiders.
14. U.S. Department of Justice: Determining the fair market value of limited partnership and assignee interests in a family limited partnership.
15. IRS: Valuing the customer relationship goodwill associated with Technicolor's film processing business at the time of its acquisition by Carlton Communications PLC.
16. White & Case: Opining on the use and importance of most-favored nation ("MFN") provisions in contracts generally and specifically with respect to the Master Subscriber Management System Agreement between CSG Systems, Inc. and AT&T Broadband.
17. Arnold & Porter: Determining the possible economic meaning of certain contractual terms in two agreements reached between Hughes Communications Galaxy, Inc. and the National Rural Telecommunications Cooperative.
18. Kajan Mather and Barish: Allocating the value of a noncompete agreement between California, the rest of the United States, Mexico, and Canada for California state tax purposes.
19. New York State Department of Taxation and Finance: Analyzing the arm's length nature of royalty rates set on intellectual property (trade names and trademarks) transferred by Lowe's Companies Inc. to a Delaware Holding Company.
20. IRS: Determining whether (and to what extent), as of June 30, 1994, it was likely that in 2006, Euro Disney S.C.A. would be compelled, in order to protect its economic or other interests, to exercise the Lease Assignment Option it received as part of a financial restructuring plan that was entered into as a result of large operating losses at Euro Disneyland.
21. IRS: Determining the fair market values of limited partnership interests in a family limited partnership, including appropriate minority and lack of marketability discounts.
22. New York State Department of Taxation and Finance: Analyzing the arm's length nature of royalty rates set on intellectual property (art work and verses) transferred by [name deleted] to a Delaware Holding Company.

23. IRS: Determining the fair market value of First Guaranteed Cumulative Preferred and Common Equity Classes of limited partner interests in a family limited partnership, including the appropriate minority and lack of marketability discounts.
24. IRS: Determining whether the insurance services provided by an offshore wholly-owned reinsurance subsidiary to its parent in the automobile extended warranty business were priced on an arm's length basis.
25. IRS: Determining whether the insurance services provided by an offshore wholly-owned reinsurance subsidiary to its parent in the retail rent-to-own business were priced on an arm's length basis.
26. IRS: Determining whether the research and development and other cost sharing agreements entered into between Conner Peripherals, Inc. and a wholly-owned foreign subsidiary reflect an allocation of sharing of all economic costs of the research program(s) commensurate with the economic benefits, with particular consideration paid to the issue of whether the cost of employee stock options should properly be included in the costs to be shared.
27. White & Case: Analyzing the damages to IPO and secondary market purchasers of an Internet stock associated with risk factors that were allegedly omitted from the offering memorandum.
28. IRS: Determining whether the value of compensation to employees in the form of stock options is an economic cost and, if so, if this cost would be included in arm's length research and development cost-sharing agreements.
29. Hennigan, Bennett & Dorman: Assessing the adequacy of the consideration paid by Gleacher Holdings pursuant to a transaction among National Westminster Bank, Gleacher NatWest, and Gleacher Holdings.
30. IRS: Determining whether the mortgage purchase commitment contracts issued by the FHLMC (Freddie Mac) were equivalent to put options.
31. New York State Department of Taxation and Finance: Determining whether including the income of certain units of Disney Enterprises, Inc. in the computation of apportionable income on a combined franchise tax report, while excluding the New York sales of those same units from the numerator of the receipts factor, would result in a distortion of the income attributable to the activities in New York State of Disney's New York taxpayer members included in the combined report.
32. Hennigan, Bennett & Dorman: Assessing the economic substance, transfer of risk, and pricing of certain lending transactions entered into by LTV Corp.

33. Hennigan, Bennett & Dorman: Determining the financial condition and business prospects of Counsel Corp. subsequent to its sale of Stadtlender Drug Co. to Bergen Brunswig Corp.
34. New York State Department of Taxation and Finance: Determining whether including the income of certain units of Alparma Inc. in the computation of apportionable income on a combined franchise tax report, while excluding the New York sales of those same units from the numerator of the receipts factor, would result in a distortion of the income attributable to the activities in New York State of Alparma's New York taxpayer members included in the combined report.
35. Franchise Tax Board: Determining whether Mission First Financial and its parent company Southern California Edison (SCEcorp) formed a unitary business for tax purposes.
36. Jenner & Block: Estimating the value of a high-technology venture capital investment and its economic viability on behalf of General Dynamics.
37. IRS: Estimating the fair market value of Burndy Corporation's Belgian subsidiary as well as opining on the relative value of Burndy's 50% stock holding in its Japanese joint venture and on whether Burndy's 50% shareholding gave it voting and operational control of Burndy Japan that was disproportionately valuable to it given that there were unanimous consent requirements on certain corporate decisions.
38. Hennigan, Bennett & Dorman: Assessing the value of earnout provisions involving revenue, gross profits, and EBITDA targets for American IC Exchange associated with its acquisition.
39. Hennigan, Bennett & Dorman: Determining the financial condition, solvency, and business prospects of Worldwide Direct, Inc.
40. Department of Justice: Estimating the damages suffered by Republic Savings Bank as a result of the forced phaseout of Republic's supervisory goodwill mandated by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).
41. Department of Justice: Estimating the damages suffered by Southern California Federal Savings and Loan Association (SoCal) as a result of the forced phaseout of SoCal's supervisory goodwill mandated by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).
42. Department of Justice: Estimating the damages suffered by First Annapolis Federal Savings Bank as a result of the forced phaseout of First Annapolis's supervisory goodwill mandated by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).
43. Department of Justice: Estimating the damages suffered by Century Federal Savings Bank as



a result of the forced phaseout of Century's supervisory goodwill mandated by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

44. White & Case: Assessing whether CPI Corp. (Sears Portrait Studios) had suffered a material adverse effect in its business—as indicated by large declines in its most recent quarterly EBITDA and EPS, and cuts in its planned capital expenditures—sufficient to justify an investment partnership's calling off a planned leveraged buyout of the company.
45. Blumberg Family Trust: Determining an appropriate investment strategy for the trust, deviations from the above in co-trustees' actions and omissions, and the money damages incurred by the trust's beneficiaries arising out of fiduciary's failure to properly manage the trust.
46. IRS: Analyzing the business purposes for a series of corporate realignments undertaken by BTR. These realignments involved the creation of a series of new top-tier U.S. holding companies, the elimination of certain other U.S. holding companies, and the shifting of several Canadian companies from one place in the corporate hierarchy to another place.
47. Kajan Mather and Barish: Determining whether the investments in agricultural partnerships associated with American Agri-Corp. (AMCOR) had reasonable prospects of earning an economic return or were sham transactions and opining on the nature of public policy in promoting a strong farm sector and the role of the U.S. government in this endeavor.
48. IRS: Determining the relative fair market values of equity interests in J. Miller Industries, Inc. (JMI) held by two groups of shareholders, each of whom owned 50% of the stock. The first group consisted of two Miller brothers, while the second group consisted of nine JMI employees. The issue was whether the block of stock held by the employees was worth the same as or less than the block held by the Miller brothers.
49. New York State Department of Taxation and Finance: Analyzing the arm's length nature of royalty rates set on trademarks transferred by [name deleted] to a Delaware Holding Company and the legitimacy of the business purposes cited for this transfer.
50. IRS: Determining the appropriate definition of fair market value as well as the actual fair market values of the British and German subsidiaries of Schlegel Corporation, a wholly-owned U.S. affiliate of BTR Dunlop, that were sold to other units of BTR.
51. Latham & Watkins: Assessing whether the risks associated with high-yield debt issued by Weintraub Entertainment Group and underwritten by Bear Stearns were adequately disclosed in its Private Placement Memorandum, whether statements in an Executive Summary were false and misleading, and what information sophisticated investors could reasonably be expected to rely on.

52. New York State Department of Taxation and Finance: Analyzing the arm's length nature of royalty rates set on trademarks transferred by [name deleted] to a Delaware Holding Company and the legitimacy of the business purposes cited for this transfer.
53. White & Case: Analyzing the impact of Indonesia's debt reorganization in September 1998 on a credit derivatives transaction between Deutsche Bank and Capital Reinsurance Company. The transaction involved a fixed-for-floating rate swap tied to sovereign debt issued by the Republic of Indonesia. The issue was whether a credit event had occurred within the meaning of various terms and conditions in the swap contract.
54. Safeco Insurance: Assessing the economic profitability and solvency of HomeBaker Bread Slicer Company. The case involved determining the demand for and the costs of supplying HomeBaker bread slicers, the adequacy of HomeBaker's financing given its business situation, and the lost profits associated with the use of allegedly adulterated plastic materials in its production process.
55. SEC: Assessing the risks and values associated with the Orange County Investment Pool as of 1994 and determining whether CS First Boston and Merrill Lynch (two separate cases) adequately disclosed the risks connected with the Pool's investment strategy and position (including embedded losses) as of August 1994.
56. Herbert Hafif Law Offices: Determining damages suffered by Novaquest Infosystems and Webvision in failing to gain distribution for Webvision's eCommerce software, a failure that was attributed to interference by En Pointe Technologies. Damages included the potential lost chance to do an IPO.
57. IRS: Analyzing issues involving ownership and control of OPL—an offshore insurance affiliate of UPS—as well as the valuation of OPL and whether the insurance services provided to UPS by OPL were priced on an arm's length basis.
58. White & Case: Analyzing the foreign exchange trading actions of a trader for T.C. Ziraat/Bankasi to assess whether he violated the bank's trading limits, which were somewhat ambiguous.
59. Department of Justice: Estimating the value of canceled offshore leases held by Marathon and Mobil.
60. Sheppard, Mullin, Richter & Hampton: Opining as to the care, diligence, and actions that one should reasonably expect from a municipal finance officer charged with managing municipal funds and comparing the behavior of various municipal treasurers swindled by Steven Wymer against this standard on behalf of Bank of America.
61. Department of Justice: Estimating the damages suffered by Glendale Federal Bank as a result

of the forced phaseout of Glendale's supervisory goodwill mandated by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

62. IRS: Assessing the interest rate hedging strategies and risk management practices of Monex.
63. IRS: Assessing the value of RJR Nabisco's nationalized Aminoil subsidiary in Kuwait and the extent to which a payment made in compensation was for going concern value or for the lost time value of money associated with the delay in compensation.
64. White & Case: Assessing the prudence and diligence with which Cantor, Fitzgerald monitored and reported the Treasury bond trading activity of Arab Investment Company, including the use of repos and reverse repos.
65. Sachnoff & Weaver: Assessing the safety and soundness of CenTrust Bank's high yield investment practices and the economic profitability of CenTrust on an ongoing basis.
66. Pillsbury, Madison & Sutro: Analyzing the risks, returns, and investment opportunities in the foreign exchange market on behalf of Bank of America.
67. Smith Hulsey and Busey: Analyzing the appropriateness and consequences of Guarantee Security Life Insurance Co.'s junk bond investment practices and equity stripping.
68. White & Case: Assessing damages associated with Bankers Trust's use of derivatives and yield curve investment strategies in a corporate money management account.
69. White & Case: Assessing the value and solvency of MGM/UA at the time of its acquisition by Pathe. The issue was whether fraudulent conveyance had taken place at the time of the acquisition.
70. FBI: Assessment of CenTrust's junk bond investment practices.
71. Hughes & Luce: Assessing the valuation consequences of overstating Micro-C's equity and its income on the acquisition price paid by Aurora Electronics.
72. Spolin & Silverman: Analyzing the junk bond investment practices and consequences of Pilgrim Management Company.
73. IRS: Valuation of Carnation's intangible assets—including goodwill, brand names, process technology, market position, and work force—in its acquisition by Nestle.
74. IRS: Assessing the appropriateness of capital structure policies of multinationals.
75. IRS: Analyzing the pricing of interest rate/currency swap transactions by Nestle.

76. IRS: Establishing the arm's length price for contract research that should have been charged to Nestle by two contract research firms that worked solely for Nestle.
77. IRS: Estimating expected rates of return and risks on defined benefit pension plans.
78. IRS: Assessing the interest rate risk management practices of Federal National Mortgage Association and the pricing of dual currency bond swaps.
79. Shearman & Sterling: Valuing the damages associated with pipeline contamination suffered by Transwestern Pipeline.
80. Morrison & Hecker: Assessing the junk bond investment practices of Lincoln S&L for the RTC.
81. Troy & Gould: Estimating the damages involved in a class-action securities litigation case brought by Milberg WeissExpert against NTN Communications.
82. Rossbacher & Associates: Estimating damages suffered by Home Insurance in a case involving the economic profitability and financial solvency of windmill farms.
83. Sachnoff & Weaver: Assessing the safety and soundness of the investment practices of CenTrust on behalf of the RTC.
84. Berliner, Cohen & Biagini: Assessing investment banking practices on behalf of California Micro Devices.
85. Brobeck, Phleger & Harrison: Estimating damages suffered by ITT.
86. Ridout & Maybee (Canada): Opining on the foreign investment transfer pricing practices of multinational firms for Beecham, Inc.
87. Brobeck, Phleger & Harrison: Estimating damages associated with certain Wells Fargo's banking practices, specifically, its cutting off of credit to a firm that violated the terms and conditions of its loan.
88. Munger, Tolles & Olson: Expert witness for Beazer on issues related to its acquisition of Koppers.
89. Shearman & Sterling: Estimating damages suffered by Sonatrach (the Algerian national oil company) owing to a breach of contract.
90. Pettit & Martin: Estimating the economic damages associated with various investment

practices engaged in by American Diversified Savings Bank.

91. Bird and Marella: Opining on the nature of futures and forward contracts.
92. Mudge, Rose, Guthrie and Ford, Marrin, Esposito: Valuing George A. Fuller and estimating damages it suffered from a loss of major contracts.

**EXPERT WITNESS WORK FOR ALAN C. SHAPIRO LEADING TO TESTIMONY:  
1994-2006**

1. Fleet Funding, Inc. and Fleet Funding 11, Inc., Appellants v. Commissioner of Revenue, Appellee, Docket No. C271862-C271863, Commonwealth of Massachusetts, Appellate Tax Board: Analyzing the business purposes and the economic substance of the mortgage REITs established by Fleet Bank, particularly with regard to the efficiency of their use as a capital-raising device. The hearing was held before Commissioner Frank Scharaffa. I testified on March 30, 2006 (Boston, Massachusetts) on behalf of the Massachusetts Department of Revenue.
2. K.C. Multimedia, Inc., Plaintiff, v. Bank of America Technology and Operations, Inc., Defendant, Case No. 1-01-CV798875, Superior Court of the State of California for the County of Santa Clara: Assessing the economic validity of damage claims associated with alleged misappropriation of intellectual property brought against Bank of America and determining the appropriate way to estimate any such damages. I was deposed on February 3, 2006 on behalf of the defendant.
3. Micrel, Inc., Plaintiff, v. Deloitte & Touche, LLP, Defendant, Case No. CV 816477, Superior Court of the State of California for the County of Santa Clara: Assessing the effects of an error in the accounting treatment of stock options on corporate behavior and the economic consequences and costs of that behavior. I was deposed on October 28, 2005 on behalf of the plaintiff.
4. Bluebonnet Savings Bank, FSB, Plaintiffs, v. United States, Defendant, Case No. 95-532C, United States Court of Federal Claims: Estimating the damages suffered by Bluebonnet Savings Bank, FSB resulting from the elimination by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of forbearances Bluebonnet had received relating to the payment of dividends, the maintenance of capital, and the inclusion of subordinated debt in the calculation of its regulatory capital and whether all of the necessary capital contributions could have been funded with straight debt. I was deposed on June 3 and 4, 2004 (Washington, D.C.) on behalf of the U.S. Department of Justice. I testified in the U.S. Court of Federal Claims on February 25 and 28, 2005 in Washington, D.C.
5. Petition of Hallmark Marketing Corporation for Redetermination of a Deficiency Under Article 9-A of the Tax Law for the Tax Year Ended 12/31/99, State of New York, Division of Tax Appeals, DTA No. 819956: Analyzing the arm's length nature of transactions between Hallmark Marketing Corporation and its parent, Hallmark Cards, Inc. Key issues included the identification of intangible assets, the allocation of excess returns among various intangible assets, the basis of fair market value of an intangible asset, and the nature of intangible asset ownership. The hearing was held before Judge Joseph W. Pinto, Jr. I testified

on February 16 and 17, 2005 (Troy, New York) on behalf of the New York State Department of Taxation and Finance.

6. TJX Operating Companies, Appellant, vs. Commissioner of Revenue, Appellee, Docket No. C262229-C262231, Commonwealth of Massachusetts, Appellate Tax Board: Analyzing the business purposes and the economic substance of the intellectual property transactions of TJX Companies, Inc. and its wholly-owned subsidiaries with its Nevada investment holding companies, as well as the validity of TJX's use of its promissory notes in conjunction with cash transfers from its NCs back to the parent. The hearing was held before Commissioner Frank Scharaffa. I testified on January 14 and 19, 2005 (Boston, Massachusetts) on behalf of the Massachusetts Department of Revenue.
7. Tribune Company, as successor by merger to the former The Times Mirror Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, Docket No. 17443-02, United States Tax Court: Estimating the fair market value of the common stock of MB Parent on July 31, 1998, immediately after the merger of MergerSub with and into Matthew Bender & Company, Inc. The key issue was the appropriate discount for lack of control to be applied to MB Parent's Member interest in Eagle I, LLC, which held \$1.375 billion of cash at July 31, 1998. Prior to the transaction, TMD owned all the outstanding stock of Bender. TMD, in turn, was wholly owned by Times Mirror Company. I testified on December 13, 2004 on behalf of the IRS in U.S. Tax Court (Los Angeles).
8. Santa Monica Pictures, LLC, Petitioners v. Commissioner of Internal Revenue, Respondent, Docket Nos. 6163-03, 6164-03, United States Tax Court: Estimating the value of (1) the stock of Santa Monica Holdings Corporation ("SMHC") contributed by Credit Lyonnais International Services ("CLIS") to Santa Monica Pictures, LLC ("SMP") at the time it was contributed to SMP, (2) the \$79,912,955 of indebtedness owed by MGM Group Holdings Corporation to CLIS and \$974,296,600 of indebtedness owed by MGM Group Holdings to Generale Bank Nederland at the time it was contributed to SMP, (3) SMHC's interest in Carolco Pictures, Inc. at the time SMHC's stock was contributed to SMP, and (4) the net operating losses incurred by SMHC between December 31, 1992 and December 11, 1996. I testified on October 28, 2004 on behalf of the IRS in U.S. Tax Court (New York City).
9. Liberty Digital, Inc., Plaintiff v. AT&T Broadband, LLC, and Comcast Corporation, Defendants, Case No. 03-CV-95, District Court, County of Arapahoe, Colorado: Estimating the fair market value of a cash flow stream in an agreement between Liberty Digital and TCI and whether a multiples approach was a suitable valuation methodology. I was deposed on July 14, 2004 (New York City) on behalf of Comcast.
10. Linda Lukoff, et al Plaintiffs vs. G&L Realty, et al, Defendants, Case Nos. BC241251 and BC271401, Superior Court of the State of California for the County of Los Angeles: Opining as to whether the sale of G&L Realty to its senior executives took place at fair market value and whether proper corporate governance procedures were followed by G&L's board of



directors in selling the company to insiders. I was deposed on January 13, 2004 and February 23, 2004.

11. Rayford L. Keller, et al, Petitioners v. United States of America, Respondent, Civil No. V-02-62, U.S. District Court for the Southern District of Texas, Victoria Division: Determining the fair market value of a 49.95% Limited Partnership interest in a family limited partnership as well as the fair market value of the subject interest if it is an Assignee interest rather than a Limited Partnership interest. I was deposed on November 19, 2003 in Dallas on behalf of the U.S. Department of Justice.
12. New CCI, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent, Docket No. 14384-99, U.S. Tax Court: Valuing the customer relationship goodwill associated with Technicolor's film processing business at the time of its acquisition by Carlton Communications PLC. I testified on June 25, 2003 in U.S. Tax Court (San Francisco) on behalf of the IRS.
13. AT&T Broadband Management Corporation, Claimant, v. CGS Systems, Respondent, Case No. 77 181 00159 02 VSS, American Arbitration Association. Opining on the use and importance of most-favored nation ("MFN") provisions in contracts generally and specifically with respect to the Master Subscriber Management System Agreement between CSG Systems, Inc. and AT&T Broadband. I was deposed on April 4, 2003 (New York City) on behalf of AT&T Broadband.
14. National Rural Telecommunications Cooperative, Plaintiff, v. DIRECTV, et al, Defendants, Case No. CV 00-00368 LGB, U.S. District Court for the Central District of California: Determining the possible economic meaning of certain contractual terms in two agreements reached between Hughes Communications Galaxy, Inc. and the NRTC. I was deposed on March 11, 2003 (Los Angeles) on behalf of Pegasus Satellite Television.
15. Petition of Disney Enterprises, Inc. for Redetermination of a Deficiency/Revision of a Determination or for Refund of Corporation Franchise Tax Under Article 9-A of the Tax Law for the Years 1989 - 1994, State of New York, Division of Tax Appeals. The hearing was held before Judge Frank W. Barrie. I testified on February 14, 2003 (Troy, New York) on behalf of the New York State Department of Taxation and Finance.
16. Robert E. Milhous, an individual, and Gail P. Milhous, an individual, Plaintiffs, v. Franchise Tax Board, Defendant, Case No. GIC 773381, Superior Court of the State of California for the County of San Diego: Allocating the value of a noncompete agreement between California, the rest of the United States, Mexico, and Canada. I was deposed on February 3, 2003 (San Diego) and testified in Superior Court (San Diego) on March 26, 2003.
17. New York State Department of Taxation and Finance: Analyzing the arm's length nature of royalty rates set on intellectual property (trade names and trademarks) transferred by Lowe's

Companies, Inc. to a Delaware Holding Company. Petition of Lowe's or Redetermination of a Deficiency/ Revision of a Determination or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Period ending 01/31/97 & 01/31/98, State of New York, Division of Tax Appeals. The hearing was held before Judge Gary Palmer. I testified on September 4 - 5, 2002 (Troy, New York) on behalf of the New York State Department of Taxation and Finance.

18. IRS, Respondent, v. Clarissa W. Lappo, Petitioner: Determining the fair market values of limited partnership interests in the Lappo Family Limited Partnership, including appropriate minority and lack of marketability discounts. I testified on September 11, 2002 in U.S. Tax Court (Cleveland) on behalf of the IRS.
19. Southern California Federal Savings and Loan Association, SoCal Holdings, Inc., Arbur, Inc., Beverly Thrall, Roy Doumani, Preston Martin, and William E. Simon, Plaintiffs, v. United States of America, Defendant, Case No. 93-52C, U.S. Court of Federal Claims. Valuing supervisory goodwill. I was deposed on May 31 - June 1, 2000 (Washington, D.C.) and June 20 - 23, 2000 (Los Angeles) on behalf of the U.S. Department of Justice. I testified in the U.S. Court of Federal Claims (Washington, D.C.) on July 12, 15, and 16, 2002.
20. Richard C. La Van, et al, Plaintiffs, and Federal Deposit Insurance Corporation, as successor to the rights of Century Federal Savings Bank, Plaintiff Intervenor, v. United States of America, Defendant, Case No. 90-581C, U.S. Court of Federal Claims. Valuing supervisory goodwill. I was deposed on October 18, 2001 on behalf of the U.S. Department of Justice (Washington, D.C.).
21. Petition of Alpharma Inc., DTA 817895, for Redetermination of a Deficiency/Revision of a Determination or for Refund of Corporation Franchise Tax Under Article 9-A of the Tax Law for the Years 1993, 1994, 1995, State of New York, Division of Tax Appeals. The hearing was held before Judge Catherine M. Bennett. I testified on May 5, 2001 on behalf of the New York State Department of Taxation and Finance (New York City).
22. Edison International (1585456), Mission First Financial (1431482), Edison Capital (1417993), Edison Funding Company (1417994), Renewable Energy Capital Company (0715920), Mission Funding Epsilon (1426267), Plaintiffs, v. California Franchise Tax Board, Respondent, State Board of Equalization. I testified on December 12, 2000 before the State Board of Equalization on behalf of the Franchise Tax Board (Sacramento).
23. First Annapolis Bancorp, Inc., Plaintiff, and Federal Deposit Insurance Corporation, as successor to the rights of First Annapolis Federal Savings Bank, F.S.B., Plaintiff Intervenor, v. United States of America, Defendant, Case No. 94-522-C, U.S. Court of Federal Claims. Valuing supervisory goodwill. I was deposed on June 13, 2000 (Washington, D.C.) on behalf of the U.S. Department of Justice.

24. Framatome Connectors USA, Inc., presently known as Framatome Connectors USA Holding, Inc., and Subsidiaries, etc., et al., Petitioners, v. Commissioner of Internal Revenue, Respondent, Docket Nos. 5030-98, 9160-99, United States Tax Court. I testified on October 5, 2000 on behalf of the IRS in U.S. Tax Court (Washington, D.C.).
25. Blumberg Family Trust of 1980 Dated March 26, 1980; Request for Surcharge and Removal of Co-Trustee, Superior Court of the State of California for the County of Los Angeles, Case No. BP 046299. I gave a deposition on August 17, 1999 and testified on February 29, 2000 (Los Angeles) on behalf of Leslie Blumberg.
26. Securities and Exchange Commission, Plaintiff, vs. Dain Rauscher, Inc., Kenneth D. Ough and Virginia O. Horler, Defendants, Case No. SA CV 98-639 GLT (ANx), United States Bankruptcy Court, Central District of California. I was deposed on May 24, 1999 (San Francisco) on behalf of the SEC.
27. IRS, Respondent, v. American Agri-Corp. (AMCOR), Petitioner. Determining whether investments in agricultural partnerships associated with AMCOR had reasonable prospects of earning an economic return or were sham transactions and opining on the nature of public policy in promoting a strong farm sector and the role of the U.S. government in this endeavor. I testified on December 16, 1999 in U. S. Tax Court (Washington, D.C.) on behalf of AMCOR.
28. Petition of the Sherwin-Williams Company, DTA No. 816712, for Redetermination of a Deficiency/Revision of a Determination or for Refund of Corporation Franchise Tax Under Article 9-A of the Tax Law for the Years 1987, 1989, 1990 and 1991, State of New York, Division of Tax Appeals. The hearing was held before Judge Winifred Kathleen Maloney. I testified on July 30, 1999 (Troy, New York) and September 9, 1999 (New York City) on behalf of the New York State Department of Taxation and Finance.
29. BTR Dunlop, Petitioner v. Commissioner of Internal Revenue Service, Respondent, U.S. Tax Court Docket No. 25438-97. I testified on March 18 and 19, 1999 in U.S. Tax Court (Washington, D.C.) on behalf of the IRS.
30. West Coast Polymers, Plaintiff, v. Gerald Aknouny dba Homebaker Bread Slicer Co., Case No. 755087, Superior Court of State of California for the County of Orange. I was deposed on May 7, 1998 and testified on December 9, 1998 on behalf of plaintiff (Orange County).
31. UPS, Petitioner v. Commissioner of Internal Revenue Service, Respondent, U.S. Tax Court Docket No. 15993-95. I testified November 6 and 7, 1997 in U.S. Tax Court (Washington, D.C.) on behalf of the IRS.
32. Antonio Marfia, Plaintiff, v. T.C. Ziraat Bankasi, New York Branch, and Ozer Ozman, Defendants, No. 88, Civ. 3763, United States District Court, Southern District of New York.

I gave a deposition on May 13, 1997 and testified on June 9, 1997 on behalf of T.C. Ziraat Bankasi (New York City).

33. City of Sanger, et al., Plaintiffs, v. Refco Group, Ltd., et al, Defendants, Case No. CV-92-7284-RJK, United States District Court, Central District of California. I gave a deposition on March 18 and 19, 1997 (Newport Beach) on behalf of BankAmerica, a defendant.
34. RJR Nabisco, Inc., Petitioners v. Commissioner of Internal Revenue Service, Respondent, U.S. Tax Court Docket No. 3796-95. I testified February 10, 1997 in U.S. Tax Court (Washington, D.C.) on behalf of the IRS.
35. Monex, Petitioners, v. Commissioner of Internal Revenue Service, Respondent, U.S. Tax Court Docket Nos. 242-51-92 and 161-62-94. I testified January 24, 1997 and January 30, 1997 in U.S. Tax Court (San Francisco) on behalf of the IRS.
36. Glendale Federal Bank, FSB v. the United States, Civil Action No. 90-772 C, United States Court of Federal Claims. Valuing supervisory goodwill. I gave an affidavit dated December 9, 1996 on behalf of the U.S. Department of Justice. I was deposed on January 27, 28, and 29, 1997 (Washington, D.C.).
37. Federal Deposit Insurance Corporation, Plaintiff, v. David L. Paul, Defendant, Case No. 90-1477-CIV-ATKINS. I gave an affidavit dated January 23, 1996 on behalf of the Federal Deposit Insurance Corporation. I testified against David L. Paul on April 1, 1996 in United States District Court, Southern District of Florida.
38. State of Florida Department of Insurance, as Receiver of Guarantee Security Life Insurance Company, Plaintiff, v. Merrill Lynch, et al., defendants, Case No. 91-17911-CA, Division CV-C, Fourth Judicial Circuit, Duval County, Florida. I gave depositions on May 16, 1995 and June 12 and 13, 1995 in Jacksonville, Florida on behalf of the State of Florida Department of Insurance.
39. C. Lea Routledge and David Nath, Plaintiffs, v. Southwest International Exchange, Bank of America, et al, Defendants, Case No. 669348, Superior Court of the State of California for the County of San Diego. I gave a deposition on September 28, 1995 on behalf of Bank of America.
40. Credit Lyonnais v. Tracinda, et al. Case No. 94-2957 R(BQRx) in United States District Court, Central District of California. I gave a deposition on behalf of Credit Lyonnais on January 23 and January 24, 1995 (Los Angeles).
41. Aurora Electronics v. The Morris Family Trust in Arbitration in San Diego before the Honorable J. Lawrence Irving. I wrote a report dated November 1, 1994 on behalf of Aurora Electronics. I testified on behalf of Aurora Electronics on November 15, 1994.

42. United States of America v. David L. Paul, Case No. 92-134-Cr-DLG. I testified on November 18, 1994 on behalf of the FBI in United States District Court, Southern District of Florida, Miami Division.

## **Appendix B: List of Documents Relied On**

1. Adrian Zawada. Winston-Salem Journal. "Set for a Long Haul; Oakwood Homes' Losses Grow; Outlook of Manufactured-Housing Industry Still Uncertain as Tougher Lending Standards Cut Demand." November 29, 2000.
2. Amilda Dymi. National Mortgage News, "Recovery When for Manufactured Housing?" November 13, 2000. Vol. 25, Issue 9.
3. Amy Joyner. Greensboro News & Record. "Oakwood Homes Losses \$43 Million The Manufactured Housing Company Says That Sales are Improving Slightly." January 27, 2001.
4. Arnold and Bleichroeder, Inc. Manufactured Housing Research. "A Strong Close for a Good Year: Shipment Rise for Seventh Consecutive Month." February 4, 1999.
5. Arnold and Bleichroeder, Inc. Manufactured Housing Research. "November Shipments Fell Nearly 15% - Bad News Continues." January 13, 2000.
6. Arnold and Bleichroeder, Inc. Manufactured Housing Research. "Shipments Dropped 23% This Month." April 28, 2000.
7. Associated Press Newswires. "Oakwood Homes Struggles to Pull Out of Slump." May 10, 2001.
8. Brian Louis. Winston-Salem Journal. "Oakwood Cuts Losses in Quarter; Fiscal Year is Worse than 2000; Woes are Industrywide." November 21, 2001.
9. CSFB-00033246
10. CSFB-00052854
11. CSFB-00052855
12. CSFB-00052873
13. CSFB-00052956
14. CSFB-00052958
15. CSFB-00052978
16. CSFB-00053080
17. CSFB-00053081

18. CSFB-00053089
19. CSFB-00141065
20. CSFB-00148791
21. CSFB-00154641
22. CSFB-00155802
23. CSFB-00165521
24. CSFB-00170815
25. CSFB-00173794
26. CSFB-00175025
27. CSFB-00204186
28. CSFB-00220040
29. CSFB-00220219
30. CSFB-00250093
31. CSFB-00250116
32. CSFB-00250117
33. CSFB-00250118
34. CSFB-00250121
35. CSFB-00250130
36. CSFB-00250131
37. CSFB-00250132
38. CSFB-00205989.004
39. CSFB-00205989.009
40. CSFB-00205989.301
41. CSFB-00266317



42. CSFB-00266476
43. CSFB-00485359
44. CSFB-00492624
45. CSFB-00512527
46. CSFB Equity Research. "Manufactured Housing Industry." January 13, 1998.
47. CSFB Equity Research. "Oakwood Homes Corporation: Dropping Coverage." October 25, 2002.
48. CSFB Equity Research. "OH: Fiscal 3Q02 Operating Loss of \$1.29 Per Share." August 8, 2002.
49. CSFB Equity Research. "OH: FY1Q02 EPS Loss of \$1.05 Versus a Loss of \$5.36 A Year Ago." January 25, 2002.
50. CSFB Equity Research. "OH: FY2Q02 Operating Loss of \$6.25." May 1, 2002.
51. CSFB Equity Research. "Second Quarter 1999: Retail Inventory Update." September 9, 1999.
52. David P. Baron, "A Model of the Demand for Investment Banking Advising and Distribution Services for New Issues," *Journal of Finance*, Vol. 37, No. 4, September 1982.
53. Deposition of Clarence W. Walker, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, December 12, 2006.
54. Deposition of Douglas Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 26, 2006. Vol. 1.
55. Deposition of Douglass Muir, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 27, 2006. Vol. 2.
56. Deposition of Fiachra O'Driscoll, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 29, 2006. Vol. 1.
57. Deposition of Fiachra O'Driscoll, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 30, 2006. Vol. 2.
58. Deposition of Jared Felt, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, June 15, 2006.
59. Deposition of Myles Standish, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, September 21, 2006. Vol. 1.

60. Deposition of Tom Connors, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*, August 22, 2006.
61. Expert Witness Report of Dr. Michael Tennenbaum, *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*.
62. F-657
63. F-658
64. Financial Advisory Services Agreement between Oakwood Homes Corporation, Oakwood Acceptance Corporation, Oakwood Mobile Homes, Inc., HBOS Manufacturing, L.P., and Credit Suisse First Boston. August 19, 2002.
65. Findlaw. "Underwriter Due Diligence in Securities Offerings." Findlaw website, <http://library.findlaw.com/1999/May/27/126952.html>, accessed April 2007.
66. George G. Kaufman & Randall S. Kroszner. "How Should Financial Institutions and Markets be Structured, Analysis and Options for Financial System Design." September 27-28, 1996.
67. Investopedia. "Investment Bank." Investopedia website, <http://www.investopedia.com/terms/i/investmentbank.asp>, accessed April 2007.
68. Janet Mitchell. "Financial Intermediation Theory and the Sources of Value in Structured Finance Markets." December 2004.
69. Mergent FIS. History & Debt. "Oakwood Homes Corporation." December 5, 2000.
70. Monte Burke. Forbes. "Trailer King." September 20, 2002. Vol. 170. Issue 6.
71. MNAT006734
72. MNAT006735
73. MNAT006739
74. MNAT024088
75. MNAT024090
76. *Oakwood Homes Corporation/OHC Liquidation v. Credit Suisse First Boston*. Objections and Counterclaims. November 13, 2004.
77. OHCLT-01706
78. OHCLT-230798

79. Ren-Raw Chen & Hsuan-Chu Lin. "The Structural Agency Problem under Credit Risk." Rutgers Business School, June 2005.
80. Rick Appin. High Yield Report. "Bonds Sink to Distressed Area." January 24, 2000. Vol. 11, Issue 4.
81. Shane Kite. Asset Sales Report. "Oakwood: Earnings Halved, ABS Roots Intact." June 28, 1999. Vol. 13, Issue 26.

**EXHIBIT B**

**In The Matter Of:**

***OHC LIQUIDATION TRUST v.  
CREDIT SUISSE FIRST BOSTON***

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***ALAN C. SHAPIRO***

***September 5, 2007***

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***MERRILL LEGAL SOLUTIONS***

***25 West 45th Street - Suite 900***

***New York, NY 10036***

***PH: 212-557-7400 / FAX: 212-692-9171***

**SHAPIRO, ALAN C. - Vol. 1**

Page 1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In Re: ) Chapter 11  
OAKWOOD HOMES CORPORATION, ) Case No. 02-13396  
et al., ) (PJW)  
Debtors. ) Jointly Administered

OHC LIQUIDATION TRUST, )  
Plaintiff, )

vs. ) Adv. Proc. No.  
CREDIT SUISSE FIRST BOSTON, a ) 04-57060 (PJW)  
Swiss banking corporation, )  
CREDIT SUISSE FIRST BOSTON )  
LLC, a Delaware limited )  
liability corporation, CREDIT )  
SUISSE FIRST BOSTON, INC., )  
CREDIT SUISSE FIRST BOSTON )  
(U.S.A.), INC., a Delaware )  
corporation and a wholly )  
owned subsidiary of CREDIT )  
SUISSE FIRST BOSTON, INC., the )  
subsidiaries and affiliates )  
of each, and DOES 1 through )  
100, )  
Defendants.)

September 5, 2007  
10:15 a.m.

Deposition of ALAN C. SHAPIRO, held at  
the law offices of Linklaters LLP, 1345 Avenue of  
the Americas, New York, New York, pursuant to  
agreement, before Donald R. DeFaw, an RFR, CRR and  
Notary Public within and for the State of  
New York.

Page 3

ALAN SHAPIRO

(Exhibit 501, Multipage document  
entitled Report of Alan C. Shapiro, Ph.D.,  
dated 4/30/07, premarked for identification,  
as of this date.)

THE VIDEOGRAPHER: Here begins  
videotape No. 1 in the deposition of  
Alan Shapiro, In re: Oakwood Homes  
Corporation, et al., OHC Liquidation Trust  
versus Credit Suisse First Boston, et al.,  
Case No. 02-13396 (PJW). Today's date is  
September 5th, 2007. The time is 10:15.

The video operator today is  
Douglas Huebner of Merrill Legal Solutions,  
25 West 45th Street, New York, New York.  
The video deposition is taking place at  
Linklaters, 1345 Avenue of the Americas,  
New York, New York.

Will counsel please introduce  
themselves for the record.

MR. WICKES: Paul Wickes from  
Linklaters for the defendant. And with me  
are Justin Williamson and Richard Doble,  
also from our firm, and Peter Kozlowski of  
Credit Suisse.

Page 2

## APPEARANCES:

## Attorneys for Plaintiff

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1901 Avenue of the Stars, Twelfth Floor  
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BY: TONY CASTANARES, ESQ.

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J. JUSTIN WILLIAMSON, ESQ.

-AND-

LINKLATERS LLP  
One Silk Street  
London EC2Y 8HQ  
BY: RICHARD A. DOBLE, ESQ.

## ALSO PRESENT:

PETER KOZLOWSKI, Director, Counsel, (a.m.  
only) Credit Suisse Securities (USA) LLC  
DOUGLAS HUEBNER, Videographer

Page 4

ALAN SHAPIRO

MR. CASTANARES: Tony Castanares,  
Stutman Treister & Glatt, for the plaintiff.

THE VIDEOGRAPHER: Will the court  
reporter please swear in the witness.

ALAN C. SHAPIRO, called as a  
witness, having been duly sworn by the  
Notary Public, was examined and testified as  
follows:

## EXAMINATION BY

MR. WICKES:

Q. Professor Shapiro, I see from your  
expert report and your qualifications that you are  
experienced at this business of depositions, so I  
assume I don't need to explain the process to you;  
is that right?

A. Yes.

Q. All right. Is there any reason today  
why you're not able to give us your best  
testimony?

A. No.

Q. All right. Professor, in your expert  
report, dated April 30th, 2007, which we've marked  
as Exhibit 501 in this case, you tell us on page 4  
that you've been "asked by counsel to assume that

1 (Pages 1 to 4)

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Page 5	Page 7
<p>1 2 CSFB owed Oakwood and its creditors a fiduciary 3 responsibility"; is that correct? 4 A. Yes. 5 Q. Tell me, if you would, Professor, how 6 would the conclusions in your report have been 7 different had you not made that assumption. 8 A. Well, I can't -- 9 MR. CASTANARES: Objection to form. 10 A. I can't give you -- well, a legal 11 opinion, but I guess I would say even if there 12 were no fiduciary obligation that Credit Suisse's 13 behavior was inconsistent with its -- with the 14 guidelines in its compliance manual. So from that 15 standpoint I think my conclusions would still 16 stand, in that as my specific opinions, which are 17 expressed on pages 3 and 4, that CSFB did not 18 behave in a reasonable or a reasonably prudent 19 manner with respect to the services it provided to 20 Oakwood doesn't rely specifically on the existence 21 of a fiduciary obligation. 22 And second, that my opinion that CSFB 23 had financial incentives to keep Oakwood operating 24 and to delay recommending that Oakwood file for 25 bankruptcy doesn't -- does not specifically rely</p>	<p>1 ALAN SHAPIRO 2 A. I don't recall the specific person, but 3 it was somebody from the law firm of Stutman. 4 Q. Do you remember when it was you were 5 asked to make that assumption? 6 A. It was sometime before I began writing 7 my report. 8 Q. Was it before you began work on your 9 report? 10 A. I believe so. 11 Q. And you can't remember who it was who 12 asked you to make the assumption? 13 A. No, I don't. I can't. 14 Q. Can you remember the occasion when you 15 were asked to make that assumption? 16 A. Not specifically. We had various 17 meetings, both telephonic conversations as well as 18 in-person meetings. 19 Q. Before you began to write? 20 A. That's correct, and then while I was 21 working on the report. 22 Q. Do you remember whether it was in a 23 group meeting that someone asked you to make this 24 assumption or one on one? 25 A. I believe that all my meetings were</p>
Page 6	Page 8
<p>1 ALAN SHAPIRO 2 on the assumption of a fiduciary obligation, but I 3 think that it does -- it's inconsistent with the 4 guidelines in the compliance manual. 5 Q. So do I understand from that answer 6 that your conclusions would not be any different 7 if you had not made the assumption identified at 8 Roman numeral V.A on page 4 of your report? 9 A. Yes, I believe that the fiduciary 10 obligation certainly strengthens my conclusions, 11 but I think those conclusions would still stand. 12 Q. In what way does the fiduciary 13 obligation strengthen your conclusions? 14 A. Well, it would strengthen the -- it 15 wouldn't affect the second conclusion regarding 16 financial incentives, those exist independent of 17 any fiduciary obligation. But the reasonable or 18 reasonably prudent, I think you do want to take in 19 figuring whether something -- whether somebody 20 behaved in a reasonable manner. I think if they 21 had a fiduciary obligation to behave in a certain 22 way that that strengthens that obligation or makes 23 behavior less reasonable than it otherwise would. 24 Q. Who was it who asked you to make that 25 assumption?</p>	<p>1 ALAN SHAPIRO 2 group meetings, both telephonically as well as in 3 person. 4 Q. And who were the participants in those 5 group meetings? 6 A. They varied. I couldn't tell you how 7 many there were or which people. I can tell you 8 the general cast of people. 9 Q. Would you? 10 A. Sure. 11 Mr. Castanares. And again, I have to 12 say that I'll mention names, but I don't think 13 that they were -- that they all participated in 14 each meeting. I think there were different people 15 participating in different meetings. 16 Q. Okay. 17 A. Stephan Ray, Whitman, I can't recall 18 his last name. Scott Yun and -- you know, I -- 19 I'm trying to think. I think there may have been 20 one or -- possibly another lawyer or two. And 21 then there were my associates, people who helped 22 me on this matter. Dr. Atulya Sarin -- 23 Q. Hang on a second. 24 A. Sure. 25 Q. Just on the question of the lawyers</p>

2 (Pages 5 to 8)



Page 9

Page 11

1 ALAN SHAPIRO  
2 from the Stutman firm, was Pamela King a  
3 participant in any of those meetings?  
4 A. I don't recall.  
5 Q. Do you know her?  
6 A. I don't have a recollection of her.  
7 Q. Okay. Now, you started to tell us  
8 about associates and I was going to ask you later,  
9 but we'll do it now, were there other people,  
10 other than the lawyers at Stutman with whom you  
11 worked in preparing this report?  
12 A. Yes.  
13 Q. Can you tell me who they were.  
14 A. Dr. Atulya Sarin, and his name --  
15 Q. You better spell that for us.  
16 A. Yes, his name is spelled A-t-u-l-y-a,  
17 Sarin, S-a-r-i-n.  
18 Paul Sandhu, that's S-a-n-d-h-u. Those  
19 were the principal people. And then I had a  
20 couple of other people who did various data  
21 analyses for me.  
22 Q. And who were the other people?  
23 A. Reza Ilkhani, that's R-e-z-a,  
24 I-l-k-h-a-n-i, I believe.  
25 Q. Okay.

Page 10

Page 12

1 ALAN SHAPIRO  
2 A. And Allen Shen, A-l-l-e-n, S-h-e-n.  
3 And Paul Hanouna, H-a-n-o-u-n-a.  
4 Q. Okay. And if you would, just briefly  
5 identify those people for me, that is, are they  
6 work colleagues, are they employees?  
7 A. Sure, yeah.  
8 Atulya Sarin is a professor of finance  
9 at Santa Clara University. Paul Sandhu is an  
10 independent contractor. The same with Allen Shen  
11 and Reza Ilkhani. And Paul Hanouna is an  
12 assistant professor of finance at Villanova  
13 University.  
14 Q. Okay. And can you just tell me  
15 generally what role each of those five people  
16 played in your work.  
17 A. Sure. Atulya Sarin is a colleague who  
18 works very closely with me. We, you know, pretty  
19 much discuss everything related to a case. We  
20 work on other cases together.  
21 Q. Okay.  
22 A. Paul Sandhu works with us on various  
23 cases. His background is economics and law. He  
24 has a law degree from Canada, although he doesn't  
25 work as a lawyer. He goes -- he spends a fair

1 ALAN SHAPIRO  
2 amount of time going through documents, you know,  
3 very carefully helping me identify various  
4 documents that would be of relevance.  
5 And the others, Reza, Allen, and  
6 Paul Hanouna, they mostly provide data analysis  
7 services. They help me, particularly with regard  
8 to the supplemental report that I wrote in this  
9 matter.  
10 Q. Did they -- did those three, that is,  
11 Ilkhani, Shen, and Hanouna, did they assist in the  
12 principal report?  
13 A. You know, they may have done some  
14 things, but I just don't recall. What I do recall  
15 is that they -- is their assistance in the  
16 supplemental report.  
17 Q. So the principal people who worked with  
18 you on Exhibit 501 are Dr. Sarin and Paul Sandhu?  
19 A. That's correct.  
20 Q. All right. And have you worked with  
21 all those people on other matters in the past?  
22 A. Yes, I have.  
23 Q. Your principal occupation is as a  
24 professor at the University of Southern  
25 California; is that right?

1 ALAN SHAPIRO  
2 A. That's correct.  
3 Q. Is the work you do as an expert  
4 witness, do you do that through some entity or  
5 organization?  
6 A. Well, I have -- well, Atulya Sarin and  
7 I own a company called Trident Consulting Group  
8 through which we operate.  
9 Q. I see.  
10 And is it Trident Consulting Group that  
11 was actually retained by the plaintiffs in this  
12 action to provide expert services?  
13 A. No, I was.  
14 Q. You were.  
15 So is it --  
16 A. And I, in turn, used Trident Consulting  
17 Group to -- you know, to provide services to me.  
18 Q. And what kind of entity is Trident  
19 Consulting Group?  
20 A. It's an LLC.  
21 Q. It's an LLC. Okay.  
22 You get paid for your services in this  
23 matter; is that right?  
24 A. That's correct.  
25 Q. When you send a bill to the plaintiff

3 (Pages 9 to 12)

Page 13

1 ALAN SHAPIRO  
2 does that bill come from you or from Trident?  
3 A. From me.  
4 Q. And the payment is made to you?  
5 A. That's correct.  
6 Q. And then do you pay Trident?  
7 A. Yes.  
8 Q. And who pays Ms. Ilkhani, Mr. Shen, and  
9 Mr. Hanouna?  
10 A. Well, Atulya Sarin actually handles  
11 that. Those -- every -- Atulya and I are the only  
12 principals, really partners in the LLC.  
13 Q. Right.  
14 A. And then Atulya, in turn, contracts  
15 with these other people. They're all independent  
16 contractors.  
17 Q. Okay. So do you make a payment then to  
18 Trident?  
19 A. No. Actually, it's -- even though we  
20 have an LLC, actually I have an S corporation and  
21 Dr. Sarin has an S corporation. I make the  
22 payment to Dr. Sarin's S corporation.  
23 Q. When you say I make the payment, do you  
24 mean your S corporation?  
25 A. My S corporation, yes. I have a --

Page 14

1 ALAN SHAPIRO  
2 Q. Let me go back to the question I asked  
3 you before.  
4 Bills and payments with respect to your  
5 services, are they made to you personally or to  
6 your S corporation?  
7 A. Actually to my S corporation.  
8 Q. What's the name of that corporation?  
9 A. Alan C. Shapiro, Inc.  
10 Q. And what's the name of Dr. Sarin's  
11 corporation?  
12 A. Saagar Enterprises, that's S-a-a-g-a-r  
13 Enterprises.  
14 Q. And are those two entities, are they  
15 the owners of Trident or are you --  
16 A. That's correct.  
17 Q. Okay. Is there some reason why there's  
18 no mention of any of those entities in your  
19 report?  
20 A. No. There just was no reason to, to  
21 mention them.  
22 Q. Okay. Is there some reason why there's  
23 no mention in your report of the fact that other  
24 people worked on it with you?  
25 A. Yes, because I wrote the report. I

Page 15

1 ALAN SHAPIRO  
2 said I did have help from other people.  
3 Q. Okay. And when you say you wrote the  
4 report, tell me as a purely mechanical matter how  
5 was Exhibit 501 created.  
6 A. Well, I sat at the keyboard and wrote  
7 it.  
8 Q. Okay. Did you write all of it or did  
9 some of these other people write some parts of it?  
10 A. I wrote all of it.  
11 Q. Okay. And so everything that is in  
12 this report represents your conclusions?  
13 A. That's correct.  
14 Q. Do your S corporation or Trident have  
15 offices?  
16 A. Well, we both have home offices.  
17 Q. Okay. So was the work on this report  
18 done at your home office?  
19 A. Yes, it was.  
20 Q. So you were working on a computer at  
21 your home office?  
22 A. That's correct.  
23 Q. Is that computer networked?  
24 A. No.  
25 Q. It's just a standalone computer?

Page 16

1 ALAN SHAPIRO  
2 A. Yes.  
3 Q. And --  
4 A. I only hesitated because it's connected  
5 to the Internet, but...  
6 Q. I understand.  
7 Your report is dated April 30th, 2007.  
8 Can you tell us approximately when you began the  
9 actual drafting of the report.  
10 A. I would say sometime in March, probably  
11 early March, but I don't remember specifically.  
12 Q. Presumably the hard drive on your  
13 computer would have a record of when drafting  
14 began.  
15 A. I -- most likely.  
16 Q. Okay. Did you maintain and keep drafts  
17 of your report?  
18 A. No, there's just one draft that I just  
19 would type over.  
20 Q. Okay. Did you share with lawyers at  
21 the Stutman firm drafts of your report prior to  
22 the April 30th report?  
23 A. No.  
24 Q. So they never saw it until it was in  
25 its final form; is that right?

4 (Pages 13 to 16)

Page 17

Page 19

1 ALAN SHAPIRO  
 2 A. I believe that's true.  
 3 Q. Did Dr. Sarin see drafts of the report?  
 4 A. Yes.  
 5 Q. And did he make comments or edits to  
 6 the report?  
 7 A. Yes.  
 8 Q. And as a mechanical matter how would  
 9 Dr. Sarin do his editing of the report?  
 10 A. Well, most of the time he would -- we  
 11 would talk about it in conference calls. Several  
 12 times he came to my home and actually worked on it  
 13 together.  
 14 Q. Okay.  
 15 A. The same with Paul Sandhu.  
 16 Q. And did you --  
 17 Now, you say the same with Paul Sandhu,  
 18 did Paul Sandhu -- sorry.  
 19 Did you e-mail drafts back and forth  
 20 amongst yourself and Mr. Sandhu and Dr. Sarin?  
 21 A. Yes.  
 22 Q. And would those e-mails be preserved on  
 23 your computer system?  
 24 A. No.  
 25 Q. Why not?

Page 18

1 ALAN SHAPIRO  
 2 A. I just make a habit of deleting  
 3 e-mails.  
 4 Q. You delete all e-mails?  
 5 A. After a certain -- after a week or so.  
 6 Q. After a week or so you delete all of  
 7 the e-mails?  
 8 A. Yes.  
 9 Q. Okay. So there would be no record of  
 10 the successive drafts of the report, other than  
 11 whatever Word maintains; is that right?  
 12 A. I think so.  
 13 Q. Did you talk with anybody at Stutman,  
 14 at the Stutman firm, about whether or not you  
 15 should maintain drafts of your report?  
 16 A. Not that I can recall.  
 17 Q. Who was your principal contact at  
 18 Stutman?  
 19 A. I think it varied. I'd say generally  
 20 Stephan Ray.  
 21 Q. Okay. Is this the first matter on  
 22 which you've served as an expert witness, working  
 23 with the Stutman firm?  
 24 A. That's correct.  
 25 Q. This is the first time working with

1 ALAN SHAPIRO  
 2 them?  
 3 A. Yes.  
 4 Q. Have you -- you have quite a  
 5 substantial list here of matters that you've  
 6 worked on in the past.  
 7 Have you ever been engaged in a matter  
 8 in which Credit Suisse or Credit Suisse First  
 9 Boston or any of its related entities were  
 10 involved?  
 11 A. Yes.  
 12 Q. Tell me when, what matters those were.  
 13 A. Well, as best as I recall it was one  
 14 matter.  
 15 Q. Okay.  
 16 A. And that's in the Orange County  
 17 bankruptcy case.  
 18 Q. Right.  
 19 A. I worked for the SEC as their  
 20 expert economist and one of the defendants was  
 21 Credit Suisse. And I believe I wrote a report  
 22 on behalf of the SEC with regard to CSFB.  
 23 Q. Do you remember generally what the  
 24 conclusions of that report were?  
 25 A. Yes, that CSFB didn't adequately

Page 20

1 ALAN SHAPIRO  
 2 disclose in offering documents the riskiness of  
 3 the Orange County investment pool.  
 4 Q. Okay. Do you still have a copy of that  
 5 report?  
 6 A. I don't think so. The SEC probably  
 7 does, but...  
 8 Q. As a matter of course in your expert  
 9 witness work do you keep copies of your work  
 10 product?  
 11 A. Generally. It's just been, what, maybe  
 12 ten or 15 years ago. I just can't recall if I  
 13 have it or not.  
 14 MR. WICKES: Can we ask you to make  
 15 a -- have a search made for that and provide  
 16 it if you have it.  
 17 MR. CASTANARES: You can ask.  
 18 We'll take it under advisement.  
 19 A. I shouldn't say that I don't have it, I  
 20 may. It's just been so long. I have a garage  
 21 stuffed with boxes of materials.  
 22 Q. Did you look at that report as you were  
 23 working on Exhibit 501?  
 24 A. No.  
 25 Q. Did work that you did in that regard

5 (Pages 17 to 20)

Page 21

ALAN SHAPIRO

1 with respect to CSFB in any respect impact on the  
2 work you did in connection with this matter?

3 A. No.

4 Q. How did you come to be retained in this  
5 matter?

6 A. I really don't recall. All I know is I  
7 got a phone call one day. I think it was from  
8 Mr. Ray. And I don't -- I cannot recall how he  
9 got hold of my name.

10 Q. Okay. Were you -- was there an  
11 interview or --

12 Do you know what a beauty contest is?

13 A. Yes.

14 Q. Was there a beauty contest for this  
15 engagement?

16 A. I don't know, in that I don't know if  
17 there were any other contestants.

18 Q. Right.

19 A. I know that several people came to my  
20 home to talk to me about the case.

21 Q. Okay. Who were those people?

22 A. You know, I can't, I think it may have  
23 been Mr. Ray. I think there may have been  
24 somebody from the Alvarez company.  
25

Page 22

ALAN SHAPIRO

1 Q. Uh-huh.

2 A. I'm trying -- possibly Whitman, but  
3 this was, what, maybe a year and a half ago or so.  
4 I just can't -- I don't have a good recollection  
5 of that. What I do recollect is that I believe  
6 there were three, maybe four people who came to my  
7 home to talk to me.

8 Q. Was there a representative of the  
9 bondholders in that group?

10 A. I just don't recall.

11 Q. Okay. And sometime after that you were  
12 retained to be an expert in this case; is that  
13 right?

14 A. That's correct.

15 Q. And in that first meeting what did they  
16 tell you about the case?

17 A. I really don't -- don't recall. I  
18 think they were talking to me about my background  
19 and experiences. I really don't have any  
20 recollection of what they told me.

21 Q. Would you have any notes, or records,  
22 or computer entries that would indicate who was at  
23 that first meeting?

24 A. No.  
25

Page 23

ALAN SHAPIRO

1 Q. Do you keep a calendar on your home  
2 computer?

3 A. I have a calendar, but I wouldn't have  
4 kept something like that because I didn't -- I  
5 didn't know who would show up. If I know I'm  
6 going to have a meeting with somebody I'll include  
7 their name, but I think in this -- I don't know  
8 what the entry would have been, probably meeting  
9 with Stutman or something like that.

10 Q. Is it fair to say that by the end of  
11 that meeting you understood that what this group  
12 wanted was an expert who would express a negative  
13 opinion about the work that Credit Suisse First  
14 Boston had done in connection with Oakwood Homes?

15 A. Well, I really don't recall what we --  
16 just what we talked about. Just as if I'm sitting  
17 here now I -- and just being reasonable. They  
18 wouldn't want somebody who had a positive opinion,  
19 but I had no idea -- I've turned down a number of  
20 cases where I disagreed with the -- with what  
21 attorneys asked me or would have liked me to say.  
22 So I had to wait and look at the documents before  
23 I could express any opinion.

24 Q. But you understood that for the  
25

Page 24

ALAN SHAPIRO

1 purposes of the litigation they were involved in  
2 they needed somebody to express negative opinions  
3 about Credit Suisse's work, that was clear, wasn't  
4 it?

5 A. Well, as I said, I don't recollect what  
6 we talked about. I'm just saying, sitting here  
7 now, it's pretty clear to me that if you're  
8 bringing an action against a defendant that you  
9 would want somebody who had a negative opinion of  
10 the behavior of the defendant. But I have no  
11 independent recollection of just what they asked  
12 me about.

13 Q. At that first meeting did you talk  
14 about the basis on which you would be compensated  
15 for your services?

16 A. I just don't -- don't recall whether it  
17 was then or at a later time that I was called to  
18 find out what my rates were.

19 Q. Okay. How are you paid for your work  
20 on this matter?

21 A. Well, I'm paid for my time and the  
22 other people are paid for their time.

23 Q. Okay. What's your hourly rate?

24 A. My hourly rate is \$800.  
25

6 (Pages 21 to 24)

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Page 25

Page 27

1 ALAN SHAPIRO  
 2 Q. And Dr. Sarin's?  
 3 A. Dr. Sarin's is \$600.  
 4 Q. Okay. And Mr. Sandhu?  
 5 A. His rate, I believe, is \$400 an hour.  
 6 Q. Okay. How much in total have you  
 7 billed or been paid so far on this matter?  
 8 A. \$984,000.  
 9 Q. And that's the total billings for your  
 10 work and the work of the others you've described?  
 11 A. That's correct.  
 12 Q. Do you know approximately what portion  
 13 of that represents -- or specifically, if you  
 14 know -- represents your own time?  
 15 A. My best approximation, sitting here --  
 16 and I have not gone back to look at it -- but I  
 17 would estimate that about one-third of those  
 18 billings would be for my time and the other  
 19 two-thirds for my associates.  
 20 Q. Do you know approximately how many  
 21 hours you've spent on this matter?  
 22 A. No. I could estimate, as I said, based  
 23 on my rate and my estimated billings.  
 24 Q. I just tried to do that here quickly.  
 25 Is 400 hours, does that seem about

1 ALAN SHAPIRO  
 2 V.A. "I have been asked by counsel to assume that  
 3 CSFB owed Oakwood and its creditors a fiduciary  
 4 responsibility."  
 5 When you were asked to make that  
 6 assumption did -- were you told what it meant to  
 7 have a fiduciary responsibility?  
 8 A. Well, I was told -- I'm not -- I'm not  
 9 a lawyer. I tried to translate that into -- put  
 10 some economic substance to that. I mean,  
 11 generally as a financial economist you hear the  
 12 term fiduciary obligation on a regular basis.  
 13 Q. Well, this term is fiduciary  
 14 responsibility.  
 15 A. Or responsibility, yeah.  
 16 Q. What do you understand that to mean?  
 17 A. Well, the same as a fiduciary  
 18 obligation. I treat those terms to be synonymous.  
 19 Q. Okay. And what do those synonymous  
 20 terms mean?  
 21 A. Well, I understand from a legal  
 22 standpoint that there are, generally speaking, two  
 23 aspects to it, a duty of care and a duty of  
 24 loyalty.  
 25 The care I translate into looking after

Page 26

Page 28

1 ALAN SHAPIRO  
 2 right?  
 3 A. That sounds about right.  
 4 Q. Okay. I won't hold you to that math  
 5 or --  
 6 A. It's just an arithmetic issue.  
 7 Q. And have you been billed -- have you  
 8 billed and been paid currently up through today?  
 9 A. No. I sent in my last invoice as  
 10 the -- for August and haven't been paid on that  
 11 yet.  
 12 Q. But is that amount included in the  
 13 \$984,000?  
 14 A. Yes.  
 15 Q. So that's the total amount billed, some  
 16 portion is yet unpaid?  
 17 A. That's correct.  
 18 Q. But you have confidence in the Stutman  
 19 firm that it will be paid?  
 20 A. Well, I hope so. I guess more in the  
 21 Oakwood Liquidation Trust or...  
 22 MR. CASTANARES: We're solvent.  
 23 THE WITNESS: Good.  
 24 Q. Let me go back to your report. And I  
 25 want to focus again on page 4 on Roman numeral

1 ALAN SHAPIRO  
 2 the economic interests of the other party or  
 3 parties. And the duty of loyalty, basically no  
 4 self-dealing or no enriching yourself at the  
 5 expense of the other party.  
 6 Q. When you were asked to make the  
 7 assumption about fiduciary responsibility that is  
 8 described here in your report, did whoever it was  
 9 who asked you that give you either a definition or  
 10 explain to you what was meant by that term?  
 11 A. No.  
 12 Well, as best I recall, we did talk  
 13 about that.  
 14 Q. Okay.  
 15 A. And, you know, I tried to -- as I said,  
 16 I tried to translate that into something that I'm  
 17 familiar with. In other words, into something of  
 18 economic consequence. And, you know, although I  
 19 don't have a real specific recollection, I believe  
 20 that whoever I talked to agreed that that -- the  
 21 economic terminology that I used was consistent  
 22 with the notion of a fiduciary obligation.  
 23 Q. And you said that the assumption that  
 24 you made was that CSFB owed that fiduciary  
 25 obligation to Oakwood and its creditors. So let's

7 (Pages 25 to 28)

Page 29

1 ALAN SHAPIRO  
 2 break that apart a bit.  
 3 A. Sure.  
 4 Q. When you talk about owing a fiduciary  
 5 responsibility to Oakwood, what do we mean by  
 6 Oakwood in that context?  
 7 A. Oakwood the enterprise.  
 8 Q. So can we sort of use the term Oakwood  
 9 and the company interchangeably there?  
 10 A. Yes.  
 11 Q. All right.  
 12 A. And I translate that, when I think  
 13 about the duty to a company I translate that into  
 14 the economic interests of its owners.  
 15 Q. So does that --  
 16 Do I understand from that, that when  
 17 you say that you assumed that CSFB owed Oakwood  
 18 separate from its creditors, that it owed Oakwood  
 19 a fiduciary responsibility, that in that sense  
 20 you're really referring to a duty owing to the  
 21 shareholders?  
 22 A. No. When I -- I think I wasn't precise  
 23 enough. When I talk about owners I mean the  
 24 owners of all its securities. Generally that  
 25 means a responsibility to the shareholders.

Page 30

1 ALAN SHAPIRO  
 2 Q. Right.  
 3 A. But in this particular case, given that  
 4 I assume that the company was insolvent in effect,  
 5 I believe that the company was owned by its  
 6 creditors.  
 7 Q. So when you say -- well, let me ask a  
 8 different --  
 9 If I read that sentence to say simply I  
 10 was asked to assume that CSFB owed Oakwood's  
 11 creditors a fiduciary responsibility, is that  
 12 saying anything different than what the sentence  
 13 says as its written?  
 14 MR. CASTANARES: Objection to form.  
 15 A. Not really in this particular case.  
 16 Q. CSFB -- you have a chart I was just  
 17 trying to find in your report that indicates that  
 18 CSFB was underwriting asset-backed securities for  
 19 this company for a number of years.  
 20 Do you remember that?  
 21 A. Yes.  
 22 Q. And is your opinion that --  
 23 A. Page 17.  
 24 Q. Page 17. Good.  
 25 Page 17 doesn't tell us when they

Page 31

1 ALAN SHAPIRO  
 2 started underwriting asset-backed securities, does  
 3 it?  
 4 A. Oh, I think that was 1994 or so.  
 5 Q. So were you asked to assume that CSFB  
 6 owed Oakwood and its creditors a fiduciary duty  
 7 throughout the time that Credit Suisse worked with  
 8 Oakwood?  
 9 A. We didn't talk about that. It was just  
 10 in the relevant time period, from about 2000 on.  
 11 Q. And that --  
 12 When you conflate the interest of the  
 13 company and the creditors is there some event or  
 14 some condition that causes that to happen?  
 15 MR. CASTANARES: Objection to form.  
 16 A. Yes, and that is when a company is  
 17 economically insolvent.  
 18 Q. When a company is not economically  
 19 insolvent, if someone owes a fiduciary duty to  
 20 that company to whom do they owe it?  
 21 A. Well, I think that --  
 22 MR. CASTANARES: Objection, the  
 23 question is calling for a legal conclusion.  
 24 You may answer it.  
 25 MR. WICKES: I'm asking him --

Page 32

1 ALAN SHAPIRO  
 2 A. That does call for a legal conclusion.  
 3 But speaking as an economist, I think that it's  
 4 generally accepted among financial economists that  
 5 for a solvent company the fiduciary obligation is  
 6 to the shareholders of the company, the residual  
 7 claimants.  
 8 Q. Okay. And in your understanding as a  
 9 financial economist, when we talk about that  
 10 fiduciary duty to an entity absent insolvency does  
 11 the duty run to stakeholders other than the equity  
 12 owners?  
 13 A. Well, again, that would call for a  
 14 legal conclusion. I can tell you what is  
 15 generally accepted among financial economists.  
 16 Q. Well, instead of that why don't you  
 17 tell me what your understanding is.  
 18 MR. CASTANARES: Object to the question  
 19 as calling for a legal conclusion.  
 20 A. Well, I don't have -- if you're just  
 21 looking for a legal conclusion I can't --  
 22 Q. I'm not looking for a legal conclusion.  
 23 I'm asking your -- you --  
 24 At the very outset of your report you  
 25 tell us that you made an assumption, is that an

8 (Pages 29 to 32)

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Page 33

ALAN SHAPIRO

1 important assumption?

2 A. Well, as I explained before, I think it  
3 strengthens the notion of -- or the issue of  
4 whether CSFB behaved in a reasonable manner. I  
5 don't think that it's absolutely necessary to  
6 reach the conclusion that I did.

7 Whether there's any legal consequence  
8 to the conclusion depends on the existence of a  
9 fiduciary obligation, I believe.

10 Q. Okay. According to your understanding,  
11 in a pre-insolvency situation does the fiduciary  
12 duty that someone owes to a corporation encompass  
13 only the interests of its equity holders?

14 A. As I've explained, that calls for a  
15 legal conclusion. But as a financial economist I  
16 can tell you I accept what the general view is  
17 among financial economists, which is that the  
18 fiduciary obligation to an entity ultimately  
19 becomes a fiduciary obligation to the shareholders  
20 and not to other stakeholders of the organization,  
21 except insofar as there's a specific obligation to  
22 those other stakeholders.

23 Q. Okay. So in general in a  
24 pre-insolvency situation your understanding from  
25

Page 34

ALAN SHAPIRO

1 an economic point of view is that the obligation  
2 of someone who has a fiduciary duty to a  
3 corporation, is that that duty encompasses the  
4 interests of the equity holders and not other  
5 stakeholders, such as creditors, or employees, or  
6 the communities where the company works or others?

7 MR. CASTANARES: Objection to form.

8 A. That's correct.

9 Q. But that --

10 Do I further understand you to be  
11 saying that when the entity is insolvent that that  
12 fiduciary obligation of the outsider now switches  
13 and runs to the interest of the creditors?

14 MR. CASTANARES: Objection to form.

15 A. That is --

16 MR. CASTANARES: You may answer.

17 A. That is correct.

18 Q. Okay. Any particular creditors or all  
19 creditors?

20 A. The creditors of an entity, and then --

21 Q. Okay. But an entity such as Oakwood  
22 had lots of different kinds of creditors, right?

23 A. Well, you'd have to -- well, they did  
24 have various creditors. Some actually were  
25

Page 35

ALAN SHAPIRO

1 creditors of Oakwood. Others were creditors of  
2 its SPE. I think that's a very different --  
3 special purpose entity, the one through which  
4 securitizations were done.

5 Q. Right. But when we're talking about --  
6 I just want to understand your understanding. The  
7 obligation that's owed to the company when the  
8 company is insolvent, you tell us your  
9 understanding is that's now an obligation to the  
10 creditors.

11 Oakwood had in 2000, 2001 many  
12 different kinds of creditors; isn't that right?

13 MR. CASTANARES: Objection to form.

14 A. I'm not -- they had various creditors,  
15 yes.

16 Q. They had owners of publicly traded  
17 bonds, right?

18 A. Yes.

19 Q. They had trade creditors, right?

20 A. Yes.

21 Q. They had employees, right?

22 A. Yes.

23 Q. They had as I remember some other kinds  
24 of instruments other than publicly traded bonds.  
25

Page 36

ALAN SHAPIRO

1 There were some private notes; is that  
2 right?

3 A. I believe that's the case, industrial  
4 revenue bonds or something like that.

5 Q. And is the fiduciary duty that you're  
6 describing, does it run to all of those creditors  
7 or does it run to some particular subsets of them?

8 MR. CASTANARES: Objection to the  
9 question as calling for a legal conclusion.

10 A. Again, that does require a legal  
11 opinion. I can tell you that my understanding was  
12 specifically with regard to the bondholders.  
13 There may have been some fiduciary obligation to  
14 other creditors that I -- we did not talk about  
15 that. I can think of economic reasons why that  
16 would make sense, but I don't have an opinion  
17 about that.

18 Q. So would it be fair to say on the basis  
19 of the discussion we've had that what you were  
20 actually asked to assume -- the assumption that  
21 you actually made here in your report is that --  
22 and I'm looking here again at Roman numeral V.A,  
23 and I've just edited it a bit based on our  
24 discussion -- that you were asked by counsel to  
25

9 (Pages 33 to 36)



Page 37

ALAN SHAPIRO

assume that from 2000 onward CSFB owed Oakwood's bondholders a fiduciary responsibility?

MR. CASTANARES: Objection to form.

A. Well, those were the only creditors that we talked about. It may well be that they had other creditors in mind as well, I can't speak to -- I never raised that question.

Q. Okay. But --

A. So my understanding was that the specific -- that the assumption talked specifically about the bondholders. It may by inference have extended to other creditors, but that I don't know.

Q. Okay. But in any event where the assumption on page 4 of your report, Oakwood and its creditors, do I correctly understand that what the assumption you were asked to make was there was no difference there, that is, the duty was owed to Oakwood's creditors?

MR. CASTANARES: Objection to form.

A. Well, we had a number of discussions. I can't recall exactly what the evolution of those discussions were, but I do recall -- I do recall my comments, which was that it would make economic

Page 39

ALAN SHAPIRO

between different types of debt holders. We talk about debt holders in general.

I can't speak to other liabilities -- holders of other liabilities, such as employees and the like, let's say unpaid taxes, and so on. I think that really does require some legal opinion. The academic literature itself deals only with debt in a generic sense.

Q. But again, to look at your sentence in Section V.A where you wrote Oakwood and its creditors, that's as we now look at it redundant, isn't it, you're really meaning to refer to Oakwood's creditors?

MR. CASTANARES: Objection to form.

A. Given the assumption of insolvency, that's correct.

Q. Okay. Now, you've made reference to the academic literature around this subject of the movement of fiduciary responsibility.

It's fair to say, isn't it, that that academic literature in the main addresses the fiduciary obligations of directors?

A. I believe that the real emphasis is on managers and --

Page 38

ALAN SHAPIRO

sense for -- to the extent there's a fiduciary obligation to security holders, that that obligation would shift depending on the solvency of the company. That for a solvent company the obligation would be to the shareholders and when the company became insolvent that the obligation -- it would make economic sense for that obligation to shift to the creditors.

And I pointed to a large academic literature explaining the different -- the ways in which incentives change, depending on whether you're dealing with a solvent or insolvent company. And why it would make economic sense given the shift in incentives for a company that is insolvent, why it would make sense to shift any fiduciary obligation to creditors and away from shareholders.

Q. And that shift would be to creditors of any sort, not just security holders; is that right?

MR. CASTANARES: Objection to form. It calls for a legal conclusion.

A. That's correct. From the standpoint of the academic literature we don't distinguish

Page 40

ALAN SHAPIRO

Q. Managers?

A. -- as well as directors. I believe if you look at the literature it primarily talks about managers.

Q. To whom do managers of a corporation report and from whom do they take instruction?

A. Well, the CEO reports to the board of directors and takes instructions -- often as not gives instructions to the board of directors. The CEO typically sits on the board of directors, many times as chairman of the board. Other managers would report to the CEO and only report to the board, insofar as the board specifically requests them to report to it.

Q. All right. If you think about the academic literature that you've been describing with respect to the shift of fiduciary responsibility, can you point me to any of that literature which addresses -- which suggests that third parties, that is, not managers or directors of the corporation, have fiduciary duties that shift in this way to create fiduciary duties to creditors.

A. No, I cannot.

10 (Pages 37 to 40)

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Page 41

ALAN SHAPIRO

Q. The other assumption you were asked to make was that Oakwood was insolvent in September of 2001.

And you indicate at V.B that that assumption is based on Dr. Tennenbaum's report; is that correct?

A. That's correct.

Q. So is my understanding correct that up until at least April 30th of 2007, the date of Exhibit 501, you have made no independent effort to come to a conclusion about solvency or insolvency of Oakwood?

A. Well, I wouldn't say that I made no effort. I -- I reviewed Mr. Tennenbaum's report. I actually met with him and talked with him prior to my report just to learn the bases for his conclusions or his conclusion. And also actually looked at data, including analyses done by CSFB, to assure myself that Mr. Tennenbaum's conclusion was reasonable given the various facts.

Q. So you saw --

Dr. Tennenbaum's report, if my memory serves me correctly, is dated the same as Exhibit 501, April 30th.

Page 42

ALAN SHAPIRO

A. Yes.

Q. Did you see drafts of Dr. Tennenbaum's report before that date?

A. You know, I believe that I saw a draft or maybe I reviewed it in the meeting. I can't recall.

Q. Okay.

A. As I said, we did meet at Stutman's office in Century City prior to my report being due. So I don't think I ever had a physical copy of the report, so -- although I don't have a recollection, that would have been -- I can't imagine any other time that I would have seen that report.

Q. Now, Dr. Shapiro, is it fair to say that a substantial amount of your work as an expert witness deals with issues valuation?

A. Yes.

Q. Why was it that in this matter Dr. Tennenbaum was brought in to opine on valuation as opposed to your doing that yourself?

MR. CASTANARES: It calls for speculation.

MR. WICKES: Well, maybe.

Page 43

ALAN SHAPIRO

Q. Do you know?

A. I have no idea, actually.

Q. When you were talking with whoever you were talking with about being retained in this matter, did you discuss with them whether part of what you would do would be to provide valuation testimony?

A. No, never. I believe I was told that Dr. Tennenbaum was working on a solvency analysis and that was -- that was that. I never asked why, I just assumed that the law firm had its own reasons for splitting the work.

Q. Was it your understanding that Dr. Tennenbaum was retained and at work before you were?

A. I -- boy, I just don't recall.

Q. Okay.

A. I just don't know. But at some point I learned that Dr. Tennenbaum was working on a solvency analysis, but I don't recall if it was at that first meeting when I was interviewed or at a later date. But I was never asked about the solvency analysis. I was just told that he was doing a solvency analysis.

Page 44

ALAN SHAPIRO

Q. And you were asked to assume when you started work that the company was insolvent and that Dr. Tennenbaum would so conclude?

A. Yes. But as I mentioned, I wouldn't just rely on his word or the words of the lawyers. I wanted to assure myself that that was a reasonable conclusion without engaging in a full blown analysis of my own.

Q. Okay. After you were retained how did you begin your work?

A. Just reviewing documents.

Q. Okay.

A. I spent a lot of time going through documents.

Q. Okay. And what documents were you given to review?

A. Well, I've tried to list all the documents at the back of my report and I --

Q. Let me ask the question a different way.

As a mechanical matter how did you get documents to review?

A. Oh. They were shipped to my house. I just received boxes of documents.

11 (Pages 41 to 44)

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Page 45

ALAN SHAPIRO

Q. Who shipped them to you?

A. Stutman.

Q. Okay. Did they give to you all of the documents that were produced in discovery in this case?

MR. CASTANARES: It calls for speculation.

A. I have no way of knowing that. I did receive additional documents over time, of course, as depositions were taken.

Q. Right.

A. But I don't -- my best guess is that I haven't seen every document in this case. I mean, my experience with cases like this is that there are loads of documents. So maybe I received them all, but I have no way of knowing.

Q. So what you know then is that what you saw is some documents that were given to you by someone at Stutman?

A. Yes.

Q. Okay. And where you list -- I think it's at the end of your report you list the things that you -- it says "List of Documents Relied On" --

Page 47

ALAN SHAPIRO

A. And, of course, the depositions without Bates numbers, I received from them.

Q. Right.

A. But I think if it -- you know, sitting here now I can't tell you if every document dealing with Oakwood came directly from Stutman or if Paul Sandhu or somebody else might have found some of those.

I think -- my best recollection is that all the documents dealing with Oakwood came from Stutman, but I can't guarantee that that's the case, that some of those documents might not have been found by Paul Sandhu, for example.

Q. Did the documents that you got from Stutman come directly to you or did they go to Mr. Sandhu first?

A. Oh, they -- I asked to have two shipments, one to me and one to Dr. Sarin.

Q. Okay. Now, Exhibit B itself, again mechanically, did you at your keyboard prepare Exhibit B?

A. No, I had Paul Sandhu prepare that.

Q. And how did Mr. Sandhu know, for example, which of the CSFB documents you relied

Page 46

ALAN SHAPIRO

A. Yes.

Q. -- at Appendix B. Is that -- there's a combination there of some, if you will, public documents and then there are the documents that are labeled "CSFB" with numbers. Those are the discovery documents.

Is this a list of everything you were given or is it a list of something else?

A. Well, it's mostly documents that I was given. I came up with some additional ones. For example, any academic articles.

Q. Right.

But with respect -- in particular with respect to -- I guess it's numbers 9 through 45, the ones that have Bates numbers.

A. Yeah, I...

Q. Is that everything that Stutman gave you or is that some subset of that?

A. I think it's a subset. I believe I received the various equity research reports from CSFB as well.

Q. Okay.

A. They don't have Bates numbers on them.

Q. Right. Okay.

Page 48

ALAN SHAPIRO

on?

A. Oh, I just told him to include every document that we had received.

Q. All right.

A. So relied on I'd say loosely means that I at least reviewed the document.

Q. So do I --

A. Not that it necessarily affected my opinion.

Q. Right.

But so do I understand then that Exhibit B contains a full list of all the documents that you had available to you in preparing your analysis?

A. To my best recollection the answer is, yes.

Q. Okay. And Mr. Sandhu prepared Exhibit B.

Did Mr. Sandhu prepare any of the other parts of this report?

A. No.

Q. Did you prepare Exhibit A yourself?

A. That's my resume, I believe, yes.

Q. Well, sorry.

12 (Pages 45 to 48)

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Page 49

ALAN SHAPIRO

All right. You're right. Okay.

So you just said to Mr. Sandhu make a list for Exhibit B of everything that we've had about Oakwood?

A. Yes, and other documents that I've used in the report.

Q. Right.

A. Yeah, including the academic articles and the like.

Q. All right. So if there's some document that's not on Exhibit B we can assume that you never had it?

A. To the first approximation -- there's always a possibility of error, but to the best of my understanding that Exhibit B includes all -- or Appendix B includes all of the documents that I received and reviewed.

Q. Okay. At the beginning of your report on pages 3 and 4 you summarize your opinions that you reached based on your work in this case, right?

A. Yes.

Q. Okay. Let's just talk about those summaries for a bit.

Page 50

ALAN SHAPIRO

First of all, you talk throughout about something that you refer to as CSFB. Tell me what -- to your understanding what is CSFB.

A. Credit Suisse First Boston.

Q. Okay. What is that?

A. I believe it's a combination commercial and investment bank.

Q. Just tell me what you know about CSFB that you had in your mind as you're preparing this report.

A. Well, my -- I believe Credit Suisse was one of the major Swiss commercial banks that some -- a couple of decades ago, I guess, decided to get more heavily into investment banking activities. It acquired First Boston and at some point changed its name to Credit Suisse First Boston, so it's now a combination commercial bank. In other words, deposit taking institution as well as investment bank. And in this particular instance it provided basically three types of services to Oakwood Home Corporation.

Q. We'll get to that.

Did you in the process of your analysis or preparing this report do any research or

Page 51

ALAN SHAPIRO

analysis to just give you general background into CSFB?

A. No.

Q. Okay. Do you know, for example, how at the time of -- from 2000 to 2002 CSFB was organized?

A. No, I don't. I did not.

Q. Okay. You talked, for example, about commercial banking and investment banking.

Did you have as you prepared this report any understanding of the relationships between those different parts of the institution?

MR. CASTANARES: Object to the form.

A. Not specifically, no.

Q. Did you do anything as you conducted your work on this report to inform yourself about CSFB's reputation in the industry?

A. Well, as a general matter I'm aware of its reputation.

Q. Okay.

A. But I did nothing specifically to enhance that understanding in this case.

Q. What's your general understanding of CSFB's reputation?

Page 52

ALAN SHAPIRO

A. Well, it's a major -- one of the major investment banks. You might call it a bulge bracket bank, one that is very well known. It does a lot of work in mergers and acquisitions, initial public offerings, helping companies raise capital.

It specifically -- I believe it helped originate the mortgage-backed securities market back in the early 1980s. It has a very good reputation. It's one of the premiere investment banks in the world.

Q. All right. And with respect to the services that CSFB provided to Oakwood that are the subject of your report, who were the principal actors for CSFB?

A. Well, the one that immediately comes to mind is Mr. O'Driscoll. I'm not sure I can pronounce his first name without butchering it.

Q. Fiachra.

A. Fiachra, Fiachra O'Driscoll, that's a name that stands out in my mind. I know I saw various others, but I can't think of them right now.

Q. My understanding, Doctor, that as we

13 (Pages 49 to 52)

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Page 53

1 ALAN SHAPIRO  
 2 sit here today the only name of an individual at  
 3 CSFB who provided services to Oakwood that you can  
 4 recall is the name of Mr. Fiachra -- that's  
 5 F-i-c-h-r-a, I think --  
 6 MR. CASTANARES: F-i-a-c-h-r-a.  
 7 Q. -- O'Driscoll; is that correct?  
 8 MR. CASTANARES: That misstates the  
 9 prior testimony.  
 10 A. That's correct.  
 11 MR. WICKES: I guess it doesn't.  
 12 Q. Okay. Do you know what part of CSFB  
 13 Mr. O'Driscoll worked in?  
 14 A. Oh, I'm sorry. Of course,  
 15 Mr. James Xanthos is another -- another name. He  
 16 didn't provide services, he was part of the credit  
 17 risk management group, I believe.  
 18 Q. So, again, the only name you can  
 19 remember of anybody who provided services to  
 20 Oakwood was Mr. O'Driscoll?  
 21 A. Yes.  
 22 Q. Okay. And Mr. Xanthos, that's --  
 23 MR. CASTANARES: X-a-n-t-h-o-s.  
 24 Q. What did you understand his role was?  
 25 A. Well, he did several credit analyses --

Page 54

1 ALAN SHAPIRO  
 2 Q. Okay.  
 3 A. -- of Oakwood in conjunction with their  
 4 request for -- I think a reverse repo line of  
 5 credit.  
 6 Q. Okay. Do you know what part of CSFB  
 7 Mr. O'Driscoll worked in?  
 8 A. I believe the ABS group, asset-backed  
 9 securities.  
 10 Q. Do you know what part of CSFB  
 11 Mr. Xanthos worked in?  
 12 A. I think that was CRM, the credit risk  
 13 management, but I'm --  
 14 Q. Do you have any understanding --  
 15 A. -- I'm not sure. I think that's it.  
 16 Q. From an organizational point of view,  
 17 do you have any idea of what the relationship, if  
 18 any, is between the ABS group and CRM?  
 19 A. No.  
 20 Q. All right. In the "Summary of  
 21 Opinions" on page 3, Exhibit 501, you say -- you  
 22 begin by saying "CSFB's various relationships with  
 23 Oakwood," let's talk about that.  
 24 "CSFB's various relationships with  
 25 Oakwood," what do you mean there by the various

Page 55

1 ALAN SHAPIRO  
 2 relationships?  
 3 A. That it had multiple relationships with  
 4 Oakwood.  
 5 Q. Okay. And what were those multiple  
 6 relationships?  
 7 A. Well, it acted as the securitization  
 8 agent. It acted as a lender in the case of the  
 9 warehouse facility. And it acted as a financial  
 10 adviser, both paid and unpaid.  
 11 Q. Okay. Are those all?  
 12 A. That I can think of, yes.  
 13 Q. Okay. And can you roughly put times on  
 14 those relationships.  
 15 When was it -- when you say  
 16 securitization agent you're not using that in a  
 17 technical term; is that right?  
 18 A. That's correct.  
 19 Q. They played a role with respect to the  
 20 securitization of Oakwood's consumer paper?  
 21 A. Yes, they helped Oakwood to securitize  
 22 its paper.  
 23 Q. Right.  
 24 Can you put dates around that, roughly.  
 25 A. I think that started in 1994 and ran

Page 56

1 ALAN SHAPIRO  
 2 through probably mid-2002.  
 3 Q. Okay. And you said they were a lender  
 4 to Oakwood in connection with the warehouse  
 5 facility.  
 6 A. Yes.  
 7 Q. Can you put a time around that.  
 8 A. I think that went from '01 at least to  
 9 the end or close to the end of '02.  
 10 Q. Okay. And what about -- you said they  
 11 were financial adviser, both paid and unpaid.  
 12 First paid, do you know when the timing  
 13 was of that?  
 14 A. I -- that was 2002, I think it started  
 15 in August of '02.  
 16 Q. And I'm interested in the unpaid part.  
 17 Is it your understanding on the basis  
 18 of your background and experience that major  
 19 investment banks are in the business of providing  
 20 unpaid financial advice to their customers?  
 21 A. Yes.  
 22 Q. How do they make their money?  
 23 A. Through fees. In other words, they  
 24 form a relationship with their customers and hope  
 25 that their customers turn to them for financial

14 (Pages 53 to 56)

Page 57

ALAN SHAPIRO

advice and develop a relationship of trust. And that, in turn, helps keep the customer coming back for fee based services such as securitizations.

Q. And what dates would you put on that unpaid advisory relationship?

A. I couldn't tell you when that began, but it was in full swing certainly when I began analyzing this matter as of 2000.

Q. Okay. So you say again back on page 3 of Exhibit 501, "CSFB's various relationships with Oakwood afforded it access to information, both public and inside, about Oakwood's financial condition," right?

A. Yes.

Q. What non-public information about Oakwood's financial condition did CSFB have?

A. Well, for example, in putting together the securitizations it would have to understand the -- you know, the defaults on mortgages, problems with mortgages, and so on. And it would likely have first access to that information. In other words, information before it became publicly known.

Q. Now, let me be careful here for a

Page 58

ALAN SHAPIRO

minute. I don't want you to tell me what CSFB would have had or would have been likely to have had. I want you to tell me based on your review of the documents that were provided to you what non-public financial information about Oakwood's condition CSFB had.

A. I can't point to anything specifically.

Q. Okay.

A. It's just inherent in the nature of an investment bank that it would have access to non-public information.

Q. So in all of the materials that you were given and that you saw and that you reviewed, you're not aware of any non-public financial -- any non-public information about Oakwood's financial condition that was in the possession of CSFB; is that right?

A. Not that I can think of right now. I point out the type of information that I think it would have, but I can't point to a specific document that said, yes, they had this specific information.

Q. Right.

A. At least I can't think of it right now.

Page 59

ALAN SHAPIRO

Q. Okay. And then you say in that same paragraph, "CSFB should have advised Oakwood to reduce its operations or file for bankruptcy prior to its engagement as a financial adviser...in August 2002."

Just focusing on the first part of that, can you point me to anything that you've seen in the materials that you have reviewed that suggests that at any time anybody at Oakwood asked anybody at Credit Suisse for advice with respect to Oakwood's operations.

A. Well, I think as a general matter Oakwood was looking to CSFB for advice about what to do with its precarious financial situation. And CSFB did come back with a variety of recommendations, different plans, but those plans always seemed to be based on attempting to maintain the operational status quo as opposed to changing the operations. In other words, it was looking to provide financing to keep the company going on an as-is basis.

Q. Can we make a distinction, just so we're clear here, between financial advice and operational advice.

Page 60

ALAN SHAPIRO

A. Sure.

Q. Okay. And by operational advice -- I just want to make sure we're communicating here.

By operational advice I would mean things like how many plants to operate, how many stores to operate, how many units to build, and so forth and so on, right?

Do you agree with that?

A. Yes.

Q. Okay. So when you say "CSFB should have advised Oakwood to reduce its operations," can you point me to anything in the record that you have reviewed that shows that anybody at Oakwood ever asked anybody at CSFB for that kind of advice about its operations.

A. Well, I don't think that you can give financial advice without understanding the operational situation of a company. And I've written quite extensively about the relationship between the real side of the business, the operations and the financial side of the business. And I think good financial advice always -- it's based on that know your customer knowledge and information. So I fail to see how one could give

15 (Pages 57 to 60)

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Page 61

ALAN SHAPIRO

financial advice without taking into account the operating realities facing a company.

Q. Okay. I understand how --

A. I'd just want to know what -- for example, at the very least what's the money going to be used for.

Q. I understand that opinion. I want to go back to my question.

I want to know whether anything you saw in the materials you reviewed gives any indication that anyone from Oakwood ever asked anyone from CSFB for its advice about operational matters.

A. I can't -- sitting here now I cannot point specifically to any such request.

MR. WICKES: Okay. How about a ten-minute break, is that all right?

MR. CASTANARES: Sure.

THE VIDEOGRAPHER: Going off the record at 11:39.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record, at 11:55. This marks the beginning of "tape 2."

BY MR. WICKES:

Page 63

ALAN SHAPIRO

No recommendation -- well, let's see.

"Never act in a manner adverse to the best interests of its customer." And then the know your customer rule.

I would say in all of that, giving advice and acting in a way that is geared towards maintaining operations in a money losing business is -- you know, is not appropriate advice and is not appropriate behavior under those circumstances.

Q. In the materials that you have reviewed can you point me to anything in the record that you've seen that indicates that any individual at CSFB in dealing with Oakwood ever gave Oakwood information or advice contrary to what that person actually believed.

A. Well, I -- I can't tell you what the people believed. I can point to the fact that --

Q. So the answer to my question is, no?

MR. CASTANARES: I object to the interruption of the witness's answer.

A. I was trying to --

Q. I'll let you explain, but the answer to my question --

Page 62

ALAN SHAPIRO

Q. Doctor, back in your summary of opinions on page 3 of Exhibit 501 you conclude that "CSFB should have advised Oakwood to reduce its operations or file for bankruptcy prior to its engagement as a financial adviser for restructuring purposes in August 2002."

And you preface that by saying, "Given Oakwood's financial condition and in line with its" -- I take it you mean CSFB's -- "fiduciary responsibility to Oakwood and its creditors and its own guidelines and principles of conduct."

Can you point me to anything in particular in CSFB's guidelines and principles of contact that you reviewed in which those principles and guidelines suggest that CSFB should be advising its clients to file for bankruptcy.

A. Well, not necessarily file for bankruptcy. I can turn to page 27 of my report where I talk about the relevant guidelines, which says, "be completely open and truthful with customers' and 'make no recommendation unless you have a reasonable basis to do so and can substantiate it through publicly available information."

Page 64

ALAN SHAPIRO

A. -- to explain.

Q. -- is, no?

MR. CASTANARES: And I object to the form of the question as to be so delimited as to calling for speculation as to what is in the mind of CSFB.

MR. WICKES: Well, you know what, if you're going to object, object. Don't tell him what he's supposed to say, all right?

Q. The question is, in the materials that you have reviewed did you or did you not see any documentation that indicates that any individual at CSFB told anyone at Oakwood something which that individual from CSFB did not actually believe?

A. Not specifically, no.

Q. Okay. In the second piece of your summary of opinion you indicate that "CSFB had financial incentives to keep Oakwood operating and to delay recommending that Oakwood file for bankruptcy"; is that right?

A. Yes.

Q. In all of the documents that you have reviewed have you seen anything that indicates

16 (Pages 61 to 64)

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Page 65

ALAN SHAPIRO

that anyone at CSFB who was dealing with Oakwood actually believed that Oakwood should file for bankruptcy prior to the time it did?

A. No, I've seen no such evidence as to what they did or did not believe.

Q. Okay. And with respect to your conclusion that "CSFB had financial incentives to keep Oakwood operating," how, if at all, is that financial incentive different, for example, from the incentive of a supplier to Oakwood who is selling it materials to be used in making manufactured housing, who presumably also would have had a financial incentive to keep Oakwood operating?

A. Well, for one thing, CSFB would have much more financial knowledge or much more knowledge as to the financial condition of the company.

For another thing, the supplier would not automatically have an incentive to keep selling, because typically they sell on trade credit and they're unsecured creditors. So if they believed that the company was going bankrupt they probably would cut back on supply or would

Page 67

ALAN SHAPIRO

was geared towards making it even more insolvent. And I point to the economic incentives that they -- that CSFB had to continue in that behavior, and that's what I'd like the reader to understand.

Q. So do you want the reader to understand that in the absence of these financial incentives CSFB would have somehow behaved differently vis-a-vis Oakwood?

A. They may well have. I can't say with perfect certainty that that's the case, but I believe that the financial incentives that they had were a motivating factor.

Q. And is there anything that you've seen in the record that suggests that any individual at CSFB was not being truthful in what they told Oakwood as a result of these financial incentives?

A. Well, I think there are errors of omission as well as errors of commission.

In other words, did they commit any deliberate untruth?

I can't point to anything.

Q. Okay.

A. But the point that I'm trying to make

Page 66

ALAN SHAPIRO

change the nature -- you know, the terms and conditions of their supply. It might ask for cash on the barrelhead, for example.

Q. And as a general matter would you agree with me that an ordinary trade supplier would have an interest in its customer continuing to operate so long as it was operating in a way that the supplier was getting paid for what it sold?

A. I think it would be the same incentive in that case.

Q. Similarly would you agree that employees of Oakwood had financial incentives for the company to keep operating?

A. Yes. Again, with the proviso that they were reasonably certain of being paid for their work.

Q. Right.

And what is it that you want the reader to conclude from your conclusion about CSFB's financial incentives?

MR. CASTANARES: Objection to form.

A. Well, I point to behavior that CSFB engaged in, which was to help -- to help an insolvent enterprise keep behaving in a way that

Page 68

ALAN SHAPIRO

is that they -- there are errors of omission that I see in the record, which is that they don't point out to Oakwood that it is insolvent and things are not getting better. And in order to protect the company and its creditors, who by now have become the residual claimants, that it should change its behavior or at least accelerate its drive to downsize and look into a variety of other alternatives geared towards preserving and creating value as opposed to destroying value.

Q. Are you suggesting by putting this conclusion in your report that we should immediately be suspicious of CSFB's dealings with Oakwood because of the existence of these financial incentives?

MR. CASTANARES: Objection to form.

A. Well, I think the fact that they had economic incentives to behave in this way doesn't prove that that's why they behaved in that way, but I think it's consistent with that.

Q. Okay.

A. If they had finance -- I think the contrary, that if they had financial incentives to behave otherwise and they still behaved in this

17 (Pages 65 to 68)

Page 69

ALAN SHAPIRO

way, I would certainly not say they did it because of their incentives to behave in that way. It may be that they just made mistakes. They certainly didn't have an economic incentive to behave in that way.

Q. I'm sorry, I'll --

A. But in this particular -- in other words, if the financial incentives ran in the other direction and yet they still behaved the way in which they did, I would not say that, well, they deliberately didn't tell the company to behave otherwise because they had a financial incentive.

In this particular case what I can point out is that they -- they engaged in a pattern of behavior that was consistent with the financial incentives that they had.

Q. Isn't it true, Doctor, that your report in this matter is consistent with the financial incentives that you have as a person who is being paid by the hour as this litigation continues?

A. No. I can tell you I thought this litigation had ended probably almost a year ago, and sincerely wish that it had ended back then. I

Page 71

ALAN SHAPIRO

more money I earn on this case. So from that standpoint you can point to an alignment of financial incentives.

I'm pointing to my -- to the fact I have other things to do, and if I -- and if I didn't I would value my leisure -- I would put a higher price on my leisure time than I do on the income that I earn from the case.

Q. But you have no way of knowing, do you, whether CSFB or any of the individuals who were working on the Oakwood matters similarly had other kinds of -- either uses they could put their money to or uses they could put their time to?

You simply say because they were getting fees it was in their interest to keep getting fees, isn't that all that says?

MR. CASTANARES: Objection to form.

A. Yes, basically.

Q. Okay. And, in fact, is the conclusion that you express there, "CSFB had financial incentives to keep Oakwood operating and to delay recommending that Oakwood file for bankruptcy," is that any different from ordinary financial incentives that pertain when a financial

Page 70

ALAN SHAPIRO

have more than enough other things to occupy myself.

Q. Well, do you know whether or not CSFB had other things to occupy itself with at the time, in 2001?

Was Oakwood its only customer?

A. No, it had other customers.

Q. You get paid by the hour in this case, right?

A. I do.

Q. The more hours that the case drags on the more you get paid?

A. And the less leisure time I have. And I value my leisure time even more than the hours that I bill on this case. So my incentives run in the opposite direction.

Q. It's true, isn't it, Doctor, that your financial incentives in terms of your retention in this case are consistent with the conclusions that you've reached?

MR. CASTANARES: Objection, argumentative.

A. No, they're not. As I pointed to -- it certainly is true that the more hours I spend the

Page 72

ALAN SHAPIRO

institution is working with a customer?

A. No, it's not, although there are -- through its guidelines and the assumption of fiduciary obligation there are limits on what one should be prepared to do.

Q. Right.

All right. Now, let's look in the more detailed section of your report, in Section VII that begins on page 12. You start your detailed discussion of your conclusion that "CSFB did not behave in a prudent manner."

In Section VII.A.1 headed "Investment Banks have unique access to information" you give us a general description of the role of an investment banker in its underwriting capacity.

And you cite in footnote 36 and footnote 38 information from something called "Investopedia" and something called "findlaw.com" that have to do with the description of the roles of an investment bank; is that right?

A. Yes.

Q. And are those two articles the principal source of the information you have here in Section VII.A.1 about the role of an investment

18 (Pages 69 to 72)

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Page 73

ALAN SHAPIRO

1 bank?

2 A. No. I've written extensively on this,  
3 but these are external sources.

4 Q. And what's the --

5 A. I've worked with investment banks, and  
6 I've written about them, read a lot of literature  
7 about them, so...8 Q. Have you ever worked for an investment  
9 bank?

10 A. No.

11 Q. So what's the point of those two  
12 citations here to Investopedia and FindLaw?13 A. Oh, it's just a citation or just  
14 citations to external sources.15 Q. Did you find those citations or did one  
16 of your colleagues find them?17 A. No. It was either Dr. Sarin or  
18 Mr. Sandhu who found these.19 Q. Did you ask one or the other of them to  
20 find you some general description about the role  
21 of investment banks?

22 A. Yes, I did.

23 Q. Who did you ask?

24 A. Dr. Sarin, and he may have asked  
25

Page 74

ALAN SHAPIRO

1 Mr. Sandhu to come up with that, I don't know.

2 Q. And one of the two of them found these  
3 two articles on the Web and then you cite them  
4 here?

5 A. Yes.

6 Q. Now, is it your understanding that  
7 prior to the time of the warehouse loan CSFB's  
8 role was primarily with respect to the  
9 securitization activities of Oakwood?

10 A. Yes.

11 Q. All right. And if you would so we're  
12 clear -- and these are with respect to what is  
13 sometimes referred to in your report as the  
14 asset-backed securities or ABSs?15 A. Yes. I believe that it provided  
16 financial advice during this time as well. But  
17 the sole fee generating activity I believe was the  
18 securitizations.19 Q. So let's focus on the securitizations  
20 for a moment.21 Tell me, if you will, about these ABS  
22 transactions, what were those transactions about?23 A. Well, those -- what Oakwood would do  
24 would be to sell manufactured housing and  
25

Page 75

ALAN SHAPIRO

1 generally provide financing to its customers. It  
2 would take the mortgages that the customers  
3 entered into and sell it to a finance subsidiary  
4 of Oakwood. And the finance subsidiary, in turn,  
5 would just basically -- a loose description, would  
6 basically bundle these mortgages in a bankruptcy  
7 remote entity and then securitize them.8 In other words, issue claims against  
9 the cash flows generated by those mortgages. And  
10 CSFB would help them in the packaging of those  
11 mortgages. There are different types of  
12 mortgage-backed securities where you can have  
13 just a single tranche, that is just a pass through  
14 of all the cash flows to every owner of the  
15 mortgage-backed securities, or more typically you  
16 have tranches, with the first tranche being paid  
17 before the second tranche being paid, and so on.  
18 And then the residuals, in this particular case  
19 the B2 securities.20 So CSFB would help in the packaging and  
21 pricing and marketing of those mortgages, that's  
22 my understanding of the role that it played in the  
23 securitization.24 Q. As a technical matter do you understand  
25

Page 76

ALAN SHAPIRO

1 that the obligations of the manufactured home  
2 customer is to repay the money it's borrowed, is  
3 that a mortgage or is that some other kind of  
4 paper?5 A. I call it a mortgage, but I can't tell  
6 you technically if that's -- if that's what it's  
7 called as opposed to some other type of loan,  
8 secured loan or...9 Q. In the course of your preparation of  
10 this report, what is the source of your  
11 understanding about how these asset-backed  
12 securities worked?13 A. I can't tell you which specific  
14 document or documents I relied on.15 Q. Did you review -- in preparing your  
16 report did you review the actual transaction  
17 documents with respect to any of these  
18 asset-backed securities?19 A. I believe I looked at one or two  
20 prospectuses, but I -- if I did it would have been  
21 quite a while ago.

22 Q. Was it --

23 A. I've looked at --

24 Q. Is it fair to say, Doctor, that your  
25

19 (Pages 73 to 76)



Page 77

ALAN SHAPIRO

description that is in your report that you've just given me about asset-backed securities is based generally on your knowledge of the industry and about how those transactions work?

A. That's correct.

Q. These were not unfamiliar to you when you began this assignment?

A. That's correct.

Q. Okay. So at the end of the chain you've described someone purchases an interest in this pool of obligations; is that right?

A. Yes.

Q. And what is it that that person is looking to, that is, the purchaser, for the repayment of their investment?

A. The monthly payments by the purchases of the manufactured housing on the loans that they took out from Oakwood.

Q. Right.

The purchaser of that securitization paper is not looking to Oakwood itself to repay its investment, is it?

A. Only to the extent that Oakwood has provided guarantees.

Page 79

ALAN SHAPIRO

Q. And what do you cite there as the source of that information?

A. A legal document in this case called "Objections and Counterclaims," dated November 13th, 2004.

Q. Okay. And do you understand that that document is serving the function of -- is in effect the complaint in the litigation between the trust and Credit Suisse?

A. Yes.

Q. Is it your understanding that a complaint is a part of the factual record of a case?

A. I don't have a good legal understanding, except that it is a complaint with one party setting out what it believes to be the facts and then draws various conclusions.

Q. Right.

In -- on page 3, Roman numeral III, "Basis for Opinions," you say that the documents and materials that you relied on "are of the type typically relied on by experts or financial economists in their research."

Would you say that the complaint in a

Page 78

ALAN SHAPIRO

Q. To what extent between 1994 and 2001, if you know, did Oakwood provide such guarantees?

A. As best as I know, Oakwood did not provide any guarantees except in mid-1980 -- I'm sorry, mid-2001 on the -- where it provided the B2 guarantees.

Q. So in general with respect to these asset-backed securities that were being issued according to what you've told us starting in 1994, the purchaser of the interest in the securitization is looking not to Oakwood, but to the pool of individual retail customers for the source of their repayment; is that correct?

A. That's correct.

Q. All right. On page 14 under Section VII.A.2.a you began by -- you begin by saying, "CSFB began to serve as Oakwood's securities underwriter in 1994. Over the next eight years, CSFB wrote more than \$7.5 billion in Oakwood securities over approximately 25 securitizations," right?

A. Yes.

Q. And you have a footnote there, right?

A. Yes.

Page 80

ALAN SHAPIRO

lawsuit in which one party sets out their position in a case is the type of material on which experts and financial economists typically rely in their research?

A. Yes, to the extent that it contains facts.

Q. Do you have any independent way of knowing whether or not that fact is accurate?

A. Well, no, not sitting here. I mean, clearly I could have gotten hold of all the prospectuses or attempted to get hold of all the prospectuses, but that seemed to be needless, particularly since the specific number, even though I cite the dollar amount and number of securitizations, really doesn't affect my opinion. So there was no reason in this case, you know, to try to independently verify those numbers.

Q. Okay. So you made -- you just took those numbers from the complaint and made no effort to check on them?

A. That's correct.

Q. Okay. On page 12, Section VII.A, "CSFB had access to public and private information concerning Oakwood's financial condition."

20 (Pages 77 to 80)

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Page 81

ALAN SHAPIRO

In connection with the role it played in the securitization transactions, is it correct to say that the information that CSFB would have had access to would have been information about the underlying obligations?

A. Yes, if you include the payment history of -- on those obligations.

Q. Of the payment history of the mobile home customers --

A. Yes.

Q. -- in paying their notes, right?

A. Yes.

Q. And you describe -- and I don't have my finger on it right now, but you describe a number of kinds of information that CSFB would have had access to, including valuations of the assets and the credit history of the customers, and so forth and so on, right?

A. Yes.

Q. And that information is information, again, with respect to the underlying obligations?

A. Yes.

Q. And that information is used for the purpose of preparing the prospectus that's used to

Page 83

ALAN SHAPIRO

would be, you know, the only point I would make with regard to that, that they do have some interest in Oakwood's survival.

And, of course, the higher the default rate the greater the interest in Oakwood's survival would be from that standpoint.

Q. Okay. Now, the way Section VII works is you say in Section VII.A, "CSFB had access to public and private information." And in VII.A.1 we have your general description of what investment banks do.

In VII.A.2 you tell us that "CSFB served as" the "investment banker and thus enjoyed the type of access to information described previously."

Aside from your general understanding of how these relationships worked, in your activities in preparing your report have you been able to identify any financial information about Oakwood that was in CSFB's possession that was not also public?

A. Well, I can't point to specific financial information. What I can point to, for example, is the fact that Mr. Xanthos can go and

Page 82

ALAN SHAPIRO

sell the aggregated securities?

A. That's correct.

Q. Because the person who is buying those securities is interested in how that pool is going to perform in terms of repayment.

A. That's correct.

Q. And the person who is buying the securities doesn't actually have an interest in whether or not -- how Oakwood is going to perform, because Oakwood's not obligated to pay on the securities, right?

A. Well, that's not entirely the case, because to the extent that -- I mean, the owners of those interests would have at least some interest in how Oakwood would perform because of -- let's suppose, for example, you have a foreclosure on one of those mobile homes.

Q. All right.

A. Then it certainly helps if Oakwood is in existence in order to refurbish and resell that mobile home. If Oakwood just disappeared, then I would say that that mobile home is likely to lose value, and hence there would be less value accruing to the owner of an interest. So that

Page 84

ALAN SHAPIRO

visit Oakwood, talk to various people, find out what their plans are, how they're doing. I'm sure that he had access to private information in that respect.

In addition Oakwood management would bounce ideas off CSFB personnel. I remembered another name, Mr. Felt, as well as Mr. O'Driscoll, to get their advice and their thinking. So from that standpoint they had private information that did have a bearing on the financial performance of the company.

Q. Well, do you actually have any way of knowing with respect to this specific relationship, whether in the discussions between individuals at CSFB and individuals at Oakwood any information that was not public was given to CSFB?

A. I can't point to any specific piece of information.

Q. And, in fact, for most of the time of the relationship the principal information that CSFB would have been concerned with was the information about the paper that was being securitized; is that incorrect?

MR. CASTANARES: Objection, calls for

21 (Pages 81 to 84)

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Page 85

ALAN SHAPIRO

speculation, and form.

A. Well, as far as I know and -- but that was the period of time that I -- that is not part of my report because CSFB was -- I'm sorry, Oakwood was a solvent corporation during that time period.

Q. And what --

When did Oakwood stop being a solvent corporation?

A. Well, my analysis, which in my supplemental report indicates --

Q. Let me -- I just want to stop you there. I'm sorry to interrupt. I want to ask my question more carefully.

A. Sure.

Q. At the time you prepared Exhibit 501 what was your understanding about when Oakwood became insolvent?

A. Well, I was just asked to assume that Mr. -- Mr. Tennenbaum's date, which is September 2001.

Q. Okay. Is there any reason to think that at any period of time CSFB had access to information about Oakwood that was not also

Page 87

ALAN SHAPIRO

A. It is.

Q. Where does that term come from?

A. Basically you're warehousing paper, you're buying up paper and keeping it in inventory until you sell it off.

Q. Until you're ready to do the next securitization?

A. Securitization, yes.

Q. You said that they stepped into the shoes of Bank of America, what do you mean by that?

A. Well, Bank of America was the provider of the warehouse facility and Bank of America wanted out, and so --

Q. And how do you know that?

A. I can't -- I read it in some document or other.

Q. Okay.

A. I think the depositions talked about that as well.

Q. Okay.

A. And so CSFB took over that as provider of the warehouse facility. In other words, basically it's a revolving line of credit.

Page 86

ALAN SHAPIRO

available to its management and board of directors?

A. No.

Q. Okay. Now, in 2001, according to your report at page 16, CSFB took on a new role; is that right?

A. Yes.

Q. And what was that new role?

A. That was to step into the shoes of Bank of America as the provider of a warehouse loan facility.

Q. Now, does the warehouse loan facility have some relationship -- excuse me -- to the asset-backed securities we've been discussing?

A. Yes, it does.

Q. What is that relationship?

A. Well, that's to provide basically the bridge financing between the time that Oakwood lends money to its customers to buy their manufactured housing and the time that Oakwood can securitize that paper, that intervening period is in effect bridged by the warehouse facility.

Q. Why is it referred to -- is warehouse a common term in these --

Page 88

ALAN SHAPIRO

Q. And is it structured in such a way that according to your understanding that CSFB was actually a secured lender to Oakwood Corporation?

A. I don't -- it was -- no, it was a lender to a bankruptcy remote entity. The whole idea was to try to avoid to the extent possible any credit risk associated with Oakwood.

Q. Right.

It was intended, again, to be a way in which an investor or a lender looked to the underlying paper as the source of its repayment, right?

A. Yes.

MR. CASTANARES: Objection to form.

A. Well, it would look to whatever assets secured the line of credit.

Q. And what were those assets?

A. Basically they were the mortgages or loans made to Oakwood's customers.

Q. Have you in the course of preparing your analysis looked at the warehouse documents?

A. I don't believe so.

Q. Okay. Again, is a warehouse

arrangement of this sort commonly used in

22 (Pages 85 to 88)

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Page 89

Page 91

1 ALAN SHAPIRO  
 2 association with a securitization structure of the  
 3 type we've been describing?  
 4 A. Yes, it is.  
 5 Q. It's of no surprise to you here to see  
 6 it in this transaction?  
 7 A. No.  
 8 Q. Okay. Now, you say on page 16, "In  
 9 February, Bank of America decided not to renew the  
 10 Warehouse Facility, and CSFB assumed the role as  
 11 lender to Oakwood by purchasing the notes from the  
 12 Warehouse Trust."  
 13 A. Yes.  
 14 Q. I think as we've just seen that it's  
 15 actually not technically right that CSFB assumed  
 16 the role of lender to Oakwood, right?  
 17 A. Ah, you are correct. I was using that  
 18 in a more generic sense, but...  
 19 Q. They stepped in and provided this  
 20 warehouse facility?  
 21 A. That's correct. And it was not a  
 22 lender to Oakwood, but they lent specifically to  
 23 this bankruptcy remote entity.  
 24 Q. Right.  
 25 And that's the standard way these

Page 90

1 ALAN SHAPIRO  
 2 warehouse arrangements are done, isn't it?  
 3 A. Very much so.  
 4 Q. Okay. What would have happened to  
 5 your understanding in February of 2001 had  
 6 Credit Suisse not stepped into the shoes of Bank  
 7 of America?  
 8 A. My best understanding was that there  
 9 was nobody else looking to replace Bank of America  
 10 as the lender. I believe I read that somewhere,  
 11 in which case this whole structure would have  
 12 collapsed. That's my understanding.  
 13 Q. And what would have been the  
 14 consequence of that?  
 15 A. Well, there would have had to have been  
 16 some serious restructuring taking place at  
 17 Oakwood. I don't know exactly what would have  
 18 happened. Maybe Oakwood would have been sold,  
 19 maybe it would have gotten into bankruptcy.  
 20 Possibly it might have gotten some type of secured  
 21 loan to restructure its operations, to buy it time  
 22 to shut down various facilities, and so on.  
 23 I'm not sure what would have happened,  
 24 but the one thing I'm pretty certain is that they  
 25 couldn't have kept doing business as usual.

1 ALAN SHAPIRO  
 2 Q. Okay. In your opinion, Professor, did  
 3 CSFB breach any duty it owed to anyone by stepping  
 4 into the shoes of Bank of America and taking over  
 5 that warehouse facility role in February of 2001?  
 6 A. Well, that becomes -- that's a legal  
 7 issue, I believe. What I can tell you is that the  
 8 economic consequences of doing that, again, is  
 9 that it enabled Oakwood to maintain business as  
 10 usual, which was not beneficial to its creditors.  
 11 Q. Do you believe it was unreasonable or  
 12 not reasonably prudent of CSFB to step into that  
 13 role in February of 2001?  
 14 A. Well, in general there's nothing wrong  
 15 and a lot of things right about being a lender to  
 16 a warehouse facility.  
 17 What I would say in this particular  
 18 instance, given the circumstances that --  
 19 financial circumstances that Oakwood was in,  
 20 anything that enabled it to maintain a  
 21 business-as-usual stance was going to harm the  
 22 economic interests of the company and its  
 23 creditors. Whether -- you know, if it owed a  
 24 fiduciary obligation, then that's -- I would say  
 25 it's even less reasonable to do that.

Page 92

1 ALAN SHAPIRO  
 2 Q. The only thing -- at the time you  
 3 prepared your report the only thing you know about  
 4 solvency or insolvency is that you were asked to  
 5 assume that Oakwood was insolvent in September of  
 6 2001, right?  
 7 A. Yes.  
 8 Q. Okay. So now we're in February of  
 9 2001.  
 10 A. Ah.  
 11 Q. Oakwood, a company with which --  
 12 according to your report -- Credit Suisse had had  
 13 a relationship since 1994 finds itself in  
 14 life-threatening circumstances because Bank of  
 15 America wants to discontinue the warehouse role.  
 16 And my question to you is, do you have  
 17 an opinion as to whether CSFB was unreasonable or  
 18 not reasonably prudent when it stepped in in  
 19 February of 2001 and made possible the  
 20 continuation of that warehouse facility?  
 21 MR. CASTANARES: Asked and answered.  
 22 A. Okay. As of February 1st and given the  
 23 assumption of insolvency as of September '01,  
 24 then, no, there was nothing imprudent or  
 25 unreasonable about that.

23 (Pages 89 to 92)



Page 93

ALAN SHAPIRO

Relative to my supplemental report, which looked more carefully at this issue and looked at data that -- the same data that CSFB had access to and analyzed, I would say it was unreasonable even as far back as February.

But at the time that I wrote this report I would say that there was nothing unreasonable about providing that warehouse facility as of February '01. But by September '01, given insolvency, I believe that CSFB should have backed away and forced some type of restructuring on Oakwood.

Q. Is it, Doctor, in your opinion always unreasonable and unreasonably prudent for a financial institution to provide financial accommodations to a customer when that customer is insolvent?

A. No, not at all. There's a whole class of lenders called debtor in possession, which specialize in making loans to insolvent enterprises.

Q. Is it in your opinion, Professor, always unreasonable or unreasonably -- or reasonably imprudent for a financial institution

Page 94

ALAN SHAPIRO

to make financial accommodations to a borrower when the borrower is insolvent, but not in a bankruptcy proceeding?

A. No.

MR. WICKES: Okay. Tony, I think this would be a good time for us to take a break for lunch, if that's all right with you.

MR. CASTANARES: That's good. Sure.

THE VIDEOGRAPHER: Going off the record at 12:44.

(Luncheon recess: 12:44 p.m.)

Page 95

ALAN SHAPIRO

AFTERNOON SESSION

(Time noted: 1:34 p.m.)

ALAN C. SHAPIRO, resumed as a witness, having been previously sworn by the Notary Public, was examined and testified as follows:

THE VIDEOGRAPHER: Back on the record at 1:34.

EXAMINATION BY

MR. WICKES:

Q. Dr. Shapiro, if we can, go back to Section VII.A.2.b of your report on page 17 -- strike that, 16 and 17.

I think we agreed before lunch that where in that paragraph you refer to Oakwood, in terms of CSFB becoming a lender to Oakwood, and so forth, we really mean CSFB becoming a lender to the special purpose vehicle that was set up to be the warehouse; is that right?

A. Yes.

Q. And at the end of that section you say, "if CSFB did not take over the role as lender, its securitization business would have immediately collapsed."

Page 96

ALAN SHAPIRO

And now that means not that -- I take it, not that CSFB's securitization business would have collapsed, but that Oakwood's securitization would have collapsed?

A. Yes, that's correct.

Q. And the consequence of that would have been that Oakwood at that time would not have been able to continue conducting its business as it had been, it would have needed a bankruptcy or some other major reorganization.

A. Yes.

Q. Okay. And I think just before we broke you told us that it's now your opinion that CSFB should have refused to step into that role and should have forced some type of restructuring on Oakwood; is that right?

A. Under the circumstances of insolvency, yes.

Q. Okay. Tell me about the board of directors of Oakwood.

What do you know about the Oakwood board?

MR. CASTANARES: Objection, vague.

A. I don't recall anything about the

24 (Pages 93 to 96)

Page 97

ALAN SHAPIRO

1 directors, except -- well, I can't even recall the  
2 name of -- I read one or two depositions of  
3 directors, but...

4 Q. Do you know --

5 A. Aside from a director pointing to  
6 advice that the board and particularly the audit  
7 committee got from CSFB, I don't recall.

8 Q. In your work in connection with  
9 preparing this report did you review minutes of  
10 Oakwood director meetings?

11 A. I don't recall reviewing such minutes.

12 Q. Do you know or did you know at the time  
13 you prepared this report what the professional  
14 background of any of the directors were?

15 A. I just don't recall. I just don't  
16 remember.

17 Q. Okay. Do you have an opinion as to  
18 whether or not the board of directors of Oakwood  
19 was competent to perform its roles?

20 A. No, I don't.

21 Q. Okay. Do you know -- is there anything  
22 you saw in your work in preparing this report that  
23 would suggest to you that the Oakwood board was  
24 not capable of fulfilling its duties?  
25

Page 98

ALAN SHAPIRO

1 A. Not that I remember.

2 Q. Okay. Do you -- in the course of the  
3 work you did in preparing this report did you form  
4 any opinion about the professional abilities or  
5 skills of Oakwood's management?

6 A. Well, I think they were overly  
7 optimistic about their business and they didn't --  
8 I don't think they fully understood the trouble  
9 that they were in, which I guess says something  
10 about their competency.

11 Q. And do you say that on any basis other  
12 than hindsight?

13 A. Yes. I think the fact is that it was  
14 well known through -- and well known I mean it's  
15 written about in equity reports and newspaper  
16 articles that the industry was suffering from  
17 substantial excess capacity and defaults were  
18 rising. And so I think under those circumstances  
19 management should have been, you know, looking at  
20 other courses of action besides just trying to  
21 maintain the business as usual with some modest  
22 downsizing.

23 Q. Leave aside what we know about what  
24 courses of management -- what courses of action  
25

Page 99

ALAN SHAPIRO

1 management took.

2 Did you review any materials in the  
3 course of preparing your report from which you  
4 would have formed an understanding of the extent  
5 to which management and/or the board were  
6 considering alternative courses of action?

7 A. Well, I saw various presentations by  
8 CSFB to management of various financial courses of  
9 action to undertake. And so I have to -- they  
10 probably were asked about that.

11 Q. Well, we're going to talk about CSFB's  
12 role as financial adviser as you describe it here  
13 later on.

14 Aside from what you saw about their  
15 discussions with CSFB, do you have any basis on  
16 which to have an understanding of the extent to  
17 which the management and the board of Oakwood  
18 during 2001 was considering alternatives?

19 A. Not that I can recall sitting here.

20 Q. So you don't know, for example, the  
21 extent to which, if at all, the management and the  
22 board of Oakwood in 2001 were giving consideration  
23 to a bankruptcy filing and the consequences of  
24 that; is that correct?  
25

Page 100

ALAN SHAPIRO

1 A. That's correct.

2 Q. Okay. Now, in Section VII.A.2.c of  
3 your report starting at page 17 you talk about  
4 CSFB's role as a financial adviser prior to the  
5 time in August of 2002 when they were actually  
6 formally retained in that capacity; is that right?

7 A. Yes.

8 Q. Okay. And you cite some deposition  
9 testimony in which various people talk generally  
10 about CSFB's role as a financial adviser.

11 Can I ask you this, aside from the  
12 three presentations by Mr. Felt that you describe  
13 in some detail that we'll talk about separately,  
14 aside from those presentations from Mr. Felt do  
15 you see in the materials that you have reviewed  
16 any indication that the Oakwood management or  
17 directors were looking to CSFB for advice  
18 unrelated to the securitization financing that  
19 we've talked about earlier today?

20 A. Well, as I point in my report there  
21 that -- you know, Mr. Muir testified that any  
22 substantive business decision that Oakwood was  
23 considering that might have an impact on loan  
24 originations, the ABS program, loan servicing,  
25

25 (Pages 97 to 100)

Page 101

ALAN SHAPIRO

1 that they inform CSFB. And that could cover a  
2 fairly wide range, including defaults and what  
3 they were doing about defaults, and so on and so  
4 forth, but...

5 And the people from CSFB came on a  
6 regular basis to talk about various ideas, but I  
7 don't have -- I can't point to any specific ideas.

8 Q. So on page 18 of your report you have a  
9 quote from Mr. Muir's deposition testimony and you  
10 say near the bottom of that page, "Mr. Muir also  
11 testified that Oakwood regularly solicited  
12 feedback from CSFB with respect to any significant  
13 action regularly taken by the Company," right?

14 A. Yes.

15 Q. And then you have a quote from  
16 Mr. Muir's deposition in which he says, "it was  
17 practice for me anytime Oakwood made any  
18 substantive business decision that might have a  
19 material impact or even a less than material but  
20 significant impact on anything having to do with  
21 loan originations, the ABS program, loan  
22 servicing, it was my practice always to inform  
23 CSFB of what we were doing and why we were doing  
24 it and solicit feedback."

Page 102

ALAN SHAPIRO

1 Now, there in that part you've quoted  
2 wouldn't you agree that what Mr. Muir is  
3 describing, loan originations, the ABS program,  
4 loan servicing, those are matters that had  
5 directly to do with the ongoing securitization  
6 program?

7 A. Yes.

8 Q. Okay. And would you agree with me that  
9 it overstates the import of that quote for you to  
10 say that Mr. Muir testified that Oakwood regularly  
11 solicited feedback from CSFB with respect to any  
12 significant action taken by the company?

13 A. Well, possibly, but not necessarily, in  
14 that most of the significant actions that the  
15 company might take would likely have an impact on  
16 loan originations. In other words, how many  
17 offices you keep open, how much production -- to  
18 what extent you maintain production, and so on,  
19 all will ultimately have an impact on loan  
20 originations and default rates, and so on, which  
21 certainly have an impact on securitization.

22 Q. All right. Other than that quote on  
23 page 18 and you have another quote from Mr. Muir  
24 at the top of page 19, and again, leaving aside  
25

Page 103

ALAN SHAPIRO

1 the presentations by Mr. Felt that we'll talk  
2 about separately, have you seen in the record  
3 examples of Oakwood consulting with CSFB about its  
4 business unrelated to the securitization?

5 A. Well, as -- oh, aside from

6 Mr. Felt's --

7 Q. Yes.

8 A. -- presentation, work on restructuring  
9 the balance sheet, and so on?

10 Q. Right.

11 A. None that I can point to.

12 Q. And, in fact, we know, don't we, that  
13 Mr. O'Driscoll was an ABS specialist?

14 A. Yes.

15 Q. So that if Mr. Muir were considering an  
16 M&A transaction, for example, you wouldn't have  
17 expected him necessarily to talk to Mr. Felt  
18 about -- to Mr. O'Driscoll about that?

19 A. That's correct.

20 Q. Okay. Do you see in the records you  
21 have reviewed, again, leaving aside Mr. Felt, any  
22 indication that Oakwood was seeking advice from  
23 anybody at CSFB other than Mr. O'Driscoll?

24 A. I don't believe I've seen such  
25

Page 104

ALAN SHAPIRO

1 evidence.

2 Q. Okay. And, in fact, at least up until  
3 February of 2001 Oakwood's board and management  
4 dealt with other banks other than CSFB; isn't that  
5 right?

6 A. Yes.

7 Q. So, for example, we talked about  
8 Bank of America had provided the warehouse  
9 facility, right?

10 A. Yes.

11 Q. And there were, if I remember  
12 correctly, a couple of issues of publicly traded  
13 debt that were direct obligations of Oakwood as  
14 opposed to securitizations that you've talked  
15 about.

16 A. That's correct.

17 Q. Do you know who was the underwriter on  
18 those?

19 A. No, I don't.

20 Q. Was it CSFB?

21 A. I don't know.

22 Q. And then finally the fourth role that  
23 CSFB had with respect to Oakwood you describe in  
24 Section VII.A.2.d, which is the role they took on  
25

26 (Pages 101 to 104)

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Page 105

ALAN SHAPIRO

when they were retained in August of 19 -- August 19th of 2002 to become their restructuring and financial adviser pursuant to a written agreement, right?

A. Yes.

Q. And that's when Oakwood actually retained Mr. Felt to provide them with assistance in getting ready for a bankruptcy filing?

A. Yes.

Q. Okay. And I don't understand from your opinion, and I want you to tell me if I'm wrong, I don't understand you to have expressed any opinion about CSFB's performance of its role as financial adviser for restructuring purposes pursuant to that August 19th, 2002 engagement agreement; is that correct?

A. That's correct.

Q. Okay. So when you talk about CSFB's poor performance in their role as financial adviser you're talking about that role in the period prior to August of 2002 when I think you said they were serving -- they were serving as kind of an informal financial adviser without a written agreement; is that right?

Page 106

ALAN SHAPIRO

A. Yes.

Q. Okay. And do I understand correctly that your focus with respect to CSFB's advice in that regard is particularly with reference to presentations made by CSFB to Oakwood in June of 2001, August of 2001, and March of 2002?

A. Well, those are specific references, but I believe that they provided advice or could have provided advice at other points as well, particularly with regard to the securitizations and right along with the warehouse facility, pointing out that these actions were just perpetuating money losing businesses.

Q. Let's break that down.

You said that -- in your answer that they were providing advice or could have been providing advice that these were just perpetuating money losing businesses.

Aside from the presentations, June, August, and March, 2001 and 2002, do you see in the record, can you point me to anything in the record that shows CSFB giving the company advice other than with respect to the structuring and execution of the ABS and warehouse transactions.

Page 107

ALAN SHAPIRO

A. Well, that -- it depends on how you interpret Mr. Muir's comment, as I -- or his testimony. His testimony could cover a pretty wide range of matters and still be relevant to the securitization. So I'm not sure exact -- just what the specifics of that advice were.

Q. Okay. But aside from Mr. Muir's testimony you haven't seen, have you, any other examples of -- again, leaving aside Mr. Felt's three presentations -- of somebody from CSFB giving -- affirmatively giving advice to the company unrelated to the securitization warehouse business?

A. That's correct.

Q. Okay. In Section VII.A.3 of your report beginning on page 22 that's headed "CSFB obtained both public and inside information about Oakwood's financial condition," is there any information that you discuss in that section of your report that would not have been known to Oakwood's management and board?

A. I don't believe so.

Q. Okay. And, in fact, you point -- I can't put my finger on it right now, but you point

Page 108

ALAN SHAPIRO

to some equity research notes by CSFB's research side in which they talked about the possibility of a bankruptcy, right?

A. That's correct.

Q. Okay. And those are by definition public documents, right, they're produced by the bank as advice to their customers?

A. Yes.

Q. In your experience do the management and directors of publicly traded corporations pay careful attention to what equity analysts are saying about their company?

A. Yes.

Q. So there's no reason to think, is there, that the directors and management of Oakwood would not have known what CSFB's equity research folks were saying about Oakwood?

A. Well, they should have and I have no reason to believe that they did not.

Q. And, in fact, for the reasons we've just said you would expect they probably did know that?

A. Yes.

Q. In fact, isn't it true in the world of

27 (Pages 105 to 108)

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Page 109

ALAN SHAPIRO

financial economists that people tend to believe boards and management pay too much attention to that information?

A. No, they believe they pay too much attention to quarterly results.

Q. All right. On page 23 at the bottom, this is still in Section VII.A.3, "In addition to obtaining publicly available information about Oakwood, CSFB also had access to private, inside information." Then you go on and say, "as part of preparing the securitization prospectuses, Oakwood provided CSFB with inside information, including the historical loss experience of a securitized pool of assets, repossession and foreclosure rates, and the credit quality of each home buyer."

So again, that's all information directly related to preparing the prospectus for the securitization, right?

A. That's correct.

Q. At Section VII.B.2 on page 26 you say, "Throughout its relationship with Oakwood, CSFB continued to monitor and insulate itself from the bankruptcy risks surrounding Oakwood."

Would you agree with me that it is in

Page 110

ALAN SHAPIRO

the very nature of the kind of asset-backed securities that we've been talking about here with Oakwood, that those structures are created to isolate the entities involved with the securitization from bankruptcy risk at the operating company?

Isn't that what ABSs are about?

A. That's exactly right and there's nothing sinister about that.

Q. Okay. Now, in Section VII.B starting on page 24 you talk about a couple of reports written in early 2000 by Mr. Xanthos at CSFB.

What's your understanding of what Mr. Xanthos's role was at CSFB?

A. Well, that he was part of the credit risk management team that gave independent opinions as to the credit risk of potential borrowers. And so there was -- I guess there was a \$75 million reverse repo facility for the ABS manufactured housing securities that CSFB was asked to provide. And so he went out and -- to access the creditworthiness of Oakwood because that would influence the creditworthiness of this facility.

Page 111

ALAN SHAPIRO

Q. Okay. And Mr. Xanthos had a pretty negative view of Oakwood, didn't he?

A. He did.

Q. Is it --

Now, in your experience it's pretty standard, isn't it, in a bank that there's a group, it may have a different name, but like this CRM team at CSFB, to evaluate proposed credit exposure by the banks?

A. Yes, that's correct. It's quite standard.

Q. And in your experience wouldn't you expect that that's where you tend to find the people who have skeptical views of their customers and the proposed transactions?

A. Well, I expect to see a greater degree of skepticism among members of the credit risk management team than I would among those who would get credit for making the loan. There's a constant tension within banks, both commercial and investment banks, between the lending officers and the risk -- the credit risk people.

Q. Indeed, that's the purpose of setting up a separate unit in a bank for that function,

Page 112

ALAN SHAPIRO

isn't it?

A. Yes.

Q. It's a kind of check and balance?

A. That's right.

Q. Can you show me -- do you see in Mr. Xanthos's two memoranda that you discuss, are there facts -- as opposed to his conclusions, are there facts which were not -- which, A, would not have been known to the management and board of Oakwood and, B, were not consistent with what was being said publicly by -- about Oakwood at the time?

A. I don't believe so.

Q. Okay. On page 28 near the bottom of the page you say, "No evidence exists that CSFB performed any assessment of the costs and benefits of the securitizations it was leading or conducted any type of analysis regarding the likelihood that Oakwood would be able to turn itself around and pull itself out of its financial predicament. Also, no evidence exists that CSFB considered and assessed the harmful impact on Oakwood's existing creditors when engaging in transactions and providing advice to the Company."

28 (Pages 109 to 112)

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Page 113

ALAN SHAPIRO

Would you agree with me that it would be more accurate there to say that you had not seen such evidence, rather than that no evidence exists?

A. Yes.

Q. Okay. Similarly at the top of page 29 you say, "no evidence exists that CSFB suggested filing for bankruptcy as an option," et cetera, et cetera.

You'd agree with me, wouldn't you, that what that really should say is that you have seen no such evidence, not that no such evidence exists?

A. That's correct.

Q. All right. Now, let's talk about Mr. Felt.

What's your understanding of what part of CSFB Mr. Felt worked in?

A. I don't recall exactly. I think it was investment banking and particularly advisory services, but I don't know specifically. Maybe restructuring, but I'm not sure.

Q. What is cross selling?

A. I'm sorry?

Page 115

ALAN SHAPIRO

Q. Okay. And isn't it clear that when Mr. O'Driscoll introduces Mr. Felt to the company in June of 2001 that's exactly what's going on, he's trying to cross sell Oakwood to use CSFB's restructuring advice?

A. I just don't -- don't recall that sequence of events. It's been quite a while since I've read these depositions, if that's where it showed up. I just don't recall.

Q. Well, you've seen Mr. Felt's -- the documents that he presented on these dates.

A. I'm sorry?

Q. You've seen the documents that Mr. Felt presented to Oakwood on the dates you've referred to here, right?

A. Yes.

Q. Those were pitch documents, weren't they?

A. Yes.

Q. By pitch document we mean that's a document that somebody at the bank has prepared to try to convince the company, Oakwood, to hire Mr. Felt's part of CSFB, to provide them a certain kind of services?

Page 114

ALAN SHAPIRO

Q. What is cross selling, what does that mean, cross selling?

A. Cross selling?

Q. Right.

A. Oh, that's where you have a customer for one of your products and you attempt to sell another product to that customer as well.

Q. Right. And --

A. In other words, the same company tries to sell different products to the same customer.

Q. So you'd agree with me, wouldn't you, that it's typical in the world of major financial institutions that one of the things they try to do with their customers when they have a relationship providing one kind of service, is they try to introduce their customer to other folks in their organization who provide other kinds of services for fees?

A. Cross selling is certainly the holy grail of financial institutions.

Q. Okay. And again, there's nothing particularly sinister or evil about that, is there?

A. Not at all.

Page 116

ALAN SHAPIRO

A. Right.

I just don't recall when that started, if Mr. Felt had come in and talked to them prior to making these pitches.

Q. All right. Well, what we know is, according to your report, that on June 26th, 2001 there's a presentation. Actually you say, "On June 26th, 2001, in a presentation made by CSFB to Oakwood," and so forth and so on.

Actually we don't know, do we, whether a presentation actually was made, what we know is there is a document --

A. Document.

Q. -- with that date on it?

A. That's correct.

MR. WICKES: And that's -- let me just see if I can...

Can you find for me that one, June 26th, 2001. It's probably one of these in here.

THE WITNESS: Can we take a quick break --

MR. WICKES: Absolutely.

THE WITNESS: -- right now?

29 (Pages 113 to 116)

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Page 117

Page 119

1 ALAN SHAPIRO

2 MR. WICKES: Should we take  
3 five minutes?

4 MR. CASTANARES: Sure.

5 THE VIDEOGRAPHER: Going off the  
6 record, end of tape 2 at 2:10.

7 (Recess taken.)

8 THE VIDEOGRAPHER: Back on the record  
9 at 2:18. This is the beginning of tape 3.10 (Exhibit 502, Multipage document  
11 entitled Presentation to Oakwood Homes  
12 Corporation, dated 6/26/01, marked for  
13 identification, as of this date.)

14 BY MR. WICKES:

15 Q. Doctor, I've given you what's been  
16 marked for identification as Exhibit 502.17 Is that the presentation to Oakwood  
18 that you refer to in your report as of June 26th,  
19 2001?

20 A. Yes.

21 Q. Do you know who -- to whom at Oakwood  
22 this was given?23 A. I don't recall. I assume it would have  
24 been the CEO and probably the CFO, but I just  
25 don't recall.

Page 118

1 ALAN SHAPIRO

2 Q. Do you, in fact, know -- not what you  
3 assume, do you, in fact, know whether or not there  
4 was actually a meeting or whether this written  
5 material was just delivered?

6 A. No, I don't know.

7 Q. Okay. Would you agree that this is a  
8 pitch document?

9 A. Yes, I do.

10 Q. Okay. So this is -- and if you look on  
11 the page that's marked page 1 of the document.12 I guess it's actually Bates No. 52956  
13 headed "CSFB Restructuring Expertise," that's  
14 actually showing different parts of CSFB that  
15 might be involved in some engagement, right?

16 A. Yes.

17 Q. And it identifies at the top the  
18 "Restructuring Group," with Phil Jacob as managing  
19 director, Jared Felt as a director, and a couple  
20 of other folks, right?

21 A. Yes.

22 Q. Okay. "CSFB," it says, "is uniquely  
23 suited to advise Oakwood. The firm's  
24 restructuring expertise is complemented by its  
25 No. 1 position in the High Yield market,"

1 ALAN SHAPIRO

2 et cetera, et cetera.

3 So this is Mr. Felt coming to the  
4 company, to Oakwood, and saying look at all the  
5 expertise we have in these kinds of difficult  
6 situations, we'd sure like you to retain us to  
7 become your financial adviser, and here are some  
8 ideas about what we might do, right?

9 A. Yes.

10 Q. Okay. Do you know whether as a result  
11 of this presentation Oakwood actually retained the  
12 restructuring group of CSFB?

13 A. Not at this point, eventually.

14 Q. Eventually?

15 A. Yes.

16 Q. But not at this time?

17 A. That's right. Not for a little over a  
18 year later.

19 Q. Right.

20 And they -- and Oakwood did not act  
21 upon any of the alternatives that are laid out in  
22 the report as possible restructuring ideas?

23 A. That's right.

24 Q. Okay. On page 30 of your report, at  
25 the end of your description of this document you

Page 120

1 ALAN SHAPIRO

2 say, "Rather than advise Oakwood to cut its losses  
3 and file for bankruptcy, CSFB encouraged Oakwood  
4 to continue to engage in financing activities  
5 based on uncertain assumptions that industry-wide  
6 and company-specific conditions would improve.  
7 This advice only accelerated the Company's  
8 insolvent financial position."

9 A. Yes.

10 Q. Now, the advice didn't accelerate  
11 anything, did it?12 What accelerated -- what we know is  
13 that actually this advice that CSFB describes in  
14 this pitch document was not taken.

15 A. That's right.

16 Q. Okay. Do you have any reason to  
17 believe based on the information you've reviewed  
18 in preparing your report that if CSFB had  
19 recommended an immediate bankruptcy filing the  
20 company would have acted on that recommendation?21 A. No, I don't know how the company would  
22 have responded.23 Q. Indeed, we know, don't we, that by this  
24 time the company certainly knew -- by the company  
25 I mean its management and directors -- the company

30 (Pages 117 to 120)

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Page 121

ALAN SHAPIRO

1 certainly knew that bankruptcy was a possibility?

2 A. Yes --

3 Q. Okay.

4 A. -- it did.

5 Q. So to the best we know the consequence  
6 of this June 26th presentation is nothing. The  
7 company neither proceeded with any of the ideas  
8 discussed here, nor did they retain Mr. Felt's  
9 group to be their financial adviser.

10 A. Well, I would say that what this  
11 document really indicated was kind of stay the  
12 course. In other words, keep doing what you're  
13 doing, rearrange some of your financial claims --

14 Q. All right.

15 A. -- but basically keep on doing business  
16 as usual and we'll help you in that.

17 Q. Where in this document does it say  
18 we'll help you in that. I mean --

19 A. Well, the we'll help you was that by  
20 rearranging your claims.

21 Q. In these financial restructuring ideas  
22 that are discussed?

23 A. Yes, that's correct.

24 And outside of this they're saying  
25

Page 122

ALAN SHAPIRO

1 we'll help you implicitly through the ongoing  
2 securitizations and providing the warehouse  
3 facility, that was at least tacit agreement with  
4 the course that Oakwood was on.

5 Q. I think what you've just said is that  
6 in effect it's an assumption that underlies the  
7 June 26th presentation that the warehouse and  
8 securitization facilities would continue as they  
9 had been.

10 A. Yes.

11 Q. Okay.

12 A. Well, in fact, they did. There was no  
13 indication that anything would change.

14 Q. And is it your opinion, Professor, that  
15 as of June 26th, 2001 CSFB had a duty to Oakwood  
16 to cut off the securitization and warehouse  
17 facilities?

18 A. Not necessarily to cut it off, but to  
19 engage in a discussion with Oakwood as to what its  
20 situation was, that it was economically insolvent.  
21 In fact, this presentation itself demonstrates  
22 that Oakwood was deeply insolvent at the time and  
23 that it was time for some more radical measures.

24 Now, as part of that you may do some  
25

Page 123

ALAN SHAPIRO

1 securitizations, but you would change your credit  
2 standards quite substantially. You may -- you  
3 would still need a warehouse facility, possibly a  
4 smaller warehouse facility, and so on.

5 So I'm not saying that the company  
6 should have followed a liquidation strategy.  
7 There may well have been valuable aspects of the  
8 business to preserve, but the -- the effect of  
9 facilitation, of doing business as usual, I think  
10 was not in the economic best interests of the  
11 company or its creditors.

12 Q. Well, let's break that apart, the  
13 company or its creditors.

14 A. Yes.

15 Q. I think what you told me before, and I  
16 want you to correct me if I'm wrong on this, is  
17 that in your opinion by this time the only  
18 constituency at the company that should have been  
19 considered was the creditors; is that right?

20 A. That's correct.

21 Q. Okay. So when you say the company and  
22 its creditors you're just being redundant?

23 A. Well, in this particular instance. But  
24 just to make sure in case -- I don't know what the  
25

Page 124

ALAN SHAPIRO

1 law is. My best understanding is that the law is  
2 in some flux as to whether an obligation is owed  
3 directly to creditors or just an obligation to the  
4 company. I just want to make it clear that I  
5 believe that from an economic standpoint, that  
6 when a company is insolvent that the duty to the  
7 company passes through to a duty to creditors.

8 Q. All right. And that's the duty of the  
9 directors you're describing, right?

10 A. Directors and management.

11 Q. And management. Okay.

12 A. Yes, and to the extent that anybody  
13 else has a fiduciary obligation to the company.  
14 Again, I'm not -- I'm just making an assumption  
15 here. I'm not giving a legal opinion as to who  
16 else might owe such a fiduciary duty.

17 Q. And had -- had CSFB come to Oakwood on  
18 June 26th, 2001 and said you need to file for  
19 bankruptcy and we need to significantly change the  
20 ways in which we're handling the securitization  
21 and warehouse facilities, in what ways would the  
22 ultimate outcome with respect to Oakwood have been  
23 different?

24 A. Well, to begin with I didn't say  
25

31 (Pages 121 to 124)

Page 125

ALAN SHAPIRO

necessarily that bankruptcy was the only option. There are other -- there may well have been other alternatives, such as the sale of the company or providing additional financing to restructure the company outside of bankruptcy. You can rearrange claims outside of bankruptcy, do equity for debt swaps, and so on and so forth. You don't have to go into bankruptcy. But let's just call it some type of dramatic restructuring that should have taken place.

Q. All right. The bankruptcy proceeding of Oakwood is but for this litigation nearly complete, is that your understanding?

MR. CASTANARES: I just didn't hear the question, could you repeat it, please.

Q. I said the bankruptcy proceedings with respect to Oakwood, aside from this litigation, is nearly complete.

A. I really don't have any understanding of what else might transpire. This is the only thing that I'm aware of.

Q. Do you know what the outcome in Oakwood's bankruptcy has been with respect to payment of claims of creditors and others?

Page 126

ALAN SHAPIRO

A. No, I don't.

Q. Okay.

A. That would -- I'm sorry. With regard to your prior question, that would really require a damages analysis, which I have not done. In other words, what an alternative outcome would have been.

Q. Well, how is it that we know -- because it seems to be your view -- how is it that we know that the outcome for interested parties in Oakwood would have been better if something different had been done in June of 2001 than what was done?

A. I can't say that it would have. I think it would have, because they persisted in a business that was losing substantial amounts of money. I think in that following year from June till -- from '01 to '02 they lost, I think, a couple of hundred million dollars in their business. What they would have lost with some other type of restructuring, I don't know.

Q. Isn't it right, Doctor, that to attempt to say today how things would have turned out if some other course of action -- some unspecified other course of action had been followed in June

Page 127

ALAN SHAPIRO

of 2001 we'd just be speculating?

MR. CASTANARES: Objection to the form.

A. Well, it wouldn't be speculative if you did an analysis -- you know, a serious analysis. I'm not opining as to what the consequences of undertaking alternative actions would have been or might have been.

Q. Right.

But if we were going to try to see what an alternative outcome would have been, to begin with we would have -- we'd have to be specific about what that alternative was, wouldn't we?

A. Yes, or you could look at a range of alternatives.

Q. Or you could look at a range.

So are you able, given the materials that you have reviewed and the work that you have done, to tell us with any degree of confidence what different outcome there would have been had Mr. Felt's June 26th report done the things you say it should have done?

A. No, I have not done such analysis --

Q. Okay.

A. -- so I cannot say.

Page 128

ALAN SHAPIRO

Q. All right.

MR. WICKES: Then let's take a look next at the August presentation, which we'll mark as 503.

(Exhibit 503, Multipage document entitled Presentation to Oakwood Homes Corporation, dated 8/9/01, marked for identification, as of this date.)

Q. In June this presentation is prepared and either is or is not presented to somebody, and what the company says is, thanks, we're not interested in buying that advice, right?

MR. CASTANARES: Objection to form.

A. Yes, I believe that's the case.

Q. So now a little over a month later Mr. Felt makes another presentation, right?

A. Yes.

Q. That's Exhibit 503 that's discussed in your report at VII.D.1.b, right?

A. Okay. What page -- I don't -- I didn't --

Q. It's page 31.

A. I did not memorize all the --

Q. That's all right.

32 (Pages 125 to 128)

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Page 129

Page 131

1 ALAN SHAPIRO  
 2 A. -- headings.  
 3 Yeah. Yes.  
 4 Q. And this section -- this document,  
 5 No. 503, this is another pitch document, isn't it?  
 6 A. Yes.  
 7 Q. Again, offering up Mr. Felt's group's  
 8 restructuring expertise, talking about the  
 9 experience of CSFB in distressed finance  
 10 assignments, and offering up some more ideas  
 11 for -- what shall we call it, financial  
 12 engineering?  
 13 A. Yes.  
 14 Q. Fair enough?  
 15 A. That's fine.  
 16 Q. Okay. And then, again, do we know  
 17 whether there's actually a meeting or a  
 18 presentation, do we know anything about what  
 19 happened with this document?  
 20 A. No, but they weren't -- to the best of  
 21 my knowledge, they were not hired by Oakwood to  
 22 engage in any of this financial engineering.  
 23 Q. Right.  
 24 So we have another failed pitch?  
 25 A. Yes.

Page 130

Page 132

1 ALAN SHAPIRO  
 2 Q. Right?  
 3 Cross selling attempt No. 2 fails?  
 4 A. Yes.  
 5 Q. Okay. And again, none of the  
 6 suggestions that are made here about -- what do  
 7 they say, exchange offers, and smaller facilities  
 8 with a flip up, and so on, none of those things  
 9 were done?  
 10 A. That's correct.  
 11 Q. Okay. So there's no harm to anyone  
 12 from this presentation, other than in your view,  
 13 again, the absence of the recommendation of some  
 14 more drastic action. This is just talk.  
 15 A. I'm sorry, I -- could you repeat that.  
 16 Q. All they did is they come down and say  
 17 we'd like to talk to you again about what we can  
 18 do, here are some more ideas. The company says,  
 19 no thanks, we're still not interested.  
 20 There's no harm from that, except in  
 21 your view from the failure to recommend something  
 22 more serious, right?  
 23 A. Yes, with regard to the pitch.  
 24 The other aspect, as I mentioned, is  
 25 the -- are the ongoing securitizations and

1 ALAN SHAPIRO  
 2 warehouse facility, which enabled the company to  
 3 keep on engaging in value destroying activities.  
 4 Q. Right.  
 5 A. But no other harm from the pitch  
 6 itself.  
 7 Q. Okay.  
 8 MR. WICKES: And then we'll mark this  
 9 as 504.  
 10 (Exhibit 504, Multipage document  
 11 entitled Oakwood Homes Discussion Materials,  
 12 March 2002, marked for identification, as of  
 13 this date.)  
 14 (Witness looks at document.)  
 15 Q. What I've given you here is what we've  
 16 now marked as Exhibit 504.  
 17 Is this the presentation that you  
 18 discuss in Section VII.D.1.c of your report  
 19 beginning at page 32?  
 20 A. Yes.  
 21 I do want to clarify, I don't recall --  
 22 you know, sitting here I don't recall. At some  
 23 point there was a pitch regarding the B2 sale  
 24 and -- with guarantees, and I don't -- I don't  
 25 recall if it was in one of these pitches or not.

1 ALAN SHAPIRO  
 2 Q. All right.  
 3 A. It may have been in the first pitch.  
 4 There was a B2 sale and that may have ultimately  
 5 led to the Lotus transaction.  
 6 Q. But this document, Exhibit 504, this is  
 7 another pitch, right?  
 8 A. Yes, it is.  
 9 Q. And this is -- as you describe it, this  
 10 is in particular addressed to the fact that the  
 11 company has some notes coming due in 2004. And it  
 12 suggests that there's a way to refinance those  
 13 notes, stretch them out to 2009 as a kind of  
 14 refinancing to take off the pressure of that  
 15 upcoming deadline.  
 16 A. That's correct.  
 17 Q. And again, so far as we know what the  
 18 company says in response to this proposal is no  
 19 thanks.  
 20 A. Yes.  
 21 Q. Right.  
 22 So nothing happens as a result of 504?  
 23 A. That's correct.  
 24 Q. Okay. And, in fact, then in August of  
 25 2002 for the first time CSFB actually does engage

33 (Pages 129 to 132)



Page 133

ALAN SHAPIRO

Mr. Felt's group. Let me show you --

MR. CASTANARES: Oakwood, I think you meant to say.

MR. WICKES: Oakwood, I'm sorry.

What did I say?

MR. CASTANARES: You said CSFB.

MR. WICKES: I'm trying to do too many things.

This would be 505, I think.

Would you mark this as 505.

(Exhibit 505, Multipage document entitled Oakwood Homes Corporation, Presentation to the Board of Directors, dated 8/19/02, marked for identification, as of this date.)

Q. I've given you what we've marked as 505. This is called a "Presentation to the Board of Directors, August 19th, 2002."

This is pitch document No. 4, right?

A. Yes.

Q. As a result of this pitch Mr. Felt's group actually is retained to help the company get ready for Chapter 11.

A. Yes.

Page 134

ALAN SHAPIRO

Q. And there's some discussion here of what kinds of things might happen in a Chapter 11 of the company.

A. Yes.

Q. And, in fact, we know that in November of 2002 Oakwood actually files for a Chapter 11 bankruptcy.

A. Yes, that's right.

Q. And I think you've told us that you're not critical of the advice and work that's done by CSFB pursuant to the August 2002 retention and the preparation for what was the ultimate bankruptcy filing.

A. Yes. I've not analyzed that, but from what I've seen I have no criticisms of it.

Q. All right. So is it fair to say, Professor, that the sum of your opinion here is that CSFB should have at least a year earlier than it did advised Oakwood to make a bankruptcy filing and should have refused to continue the securitization and warehouse facilities so as to force that decision on the company?

MR. CASTANARES: Objection to form.

A. Well, again, I didn't -- I did not say

Page 135

ALAN SHAPIRO

specifically that CSFB should have advised filing for bankruptcy. What CSFB should have done is done an extensive analysis of Oakwood's situation to study the various alternatives. First of all, in each one of these presentations, if you look at it, CSFB's own analysis shows that Oakwood is deeply economically insolvent. And so from that standpoint should have assessed what alternatives were available to Oakwood, look at the pluses and minuses and make some recommendations.

If -- I think there should have been some type of dialogue with Oakwood. You know, what the appropriate alternatives should have been, I don't know and I don't think we'll ever know because no such analysis was ever done at the time with the facts then available. They might have gone out and gathered additional facts in the process of doing their analysis.

I mentioned several alternatives already. There's no need to repeat myself on that. But the one thing I don't think that they should have done was maintain business as usual. In effect implicitly ratify the wait and see policy that, in fact, Oakwood followed during this

Page 136

ALAN SHAPIRO

period, you know, always hoping for, you know, things would be better tomorrow, I guess.

Q. So Oakwood through its management and directors has decided during this period of time -- to adopt your characterization of a wait and see attitude -- has decided to hope things get better, whatever it's decided.

Is it your opinion, Professor, that it was the duty of CSFB to substitute its judgment about those matters for the judgment of the board of directors and the management of Oakwood?

A. It's not my opinion. As I said, I'm -- what I'm assuming is that CSFB owed a fiduciary obligation to the company, and under the circumstances that means the creditors of Oakwood. It did not owe a duty to the directors and management.

Unless the directors and management gave additional information, facts, analysis to CSFB that would lead it to change its opinion as to the existence of economic insolvency, or the trade-offs associated with a stay the course, or a wait and see type policy versus some type of dramatic restructuring, such as a sale or a

34 (Pages 133 to 136)

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Page 137

ALAN SHAPIRO

1 bankruptcy. Those are not mutually exclusive,  
2 necessarily. I think that CSFB knowing what it  
3 knew should have cut off the company, even if  
4 management, you know, wanted to follow such a stay  
5 the course policy. Again, because it's -- if it  
6 has a fiduciary obligation it's to the company,  
7 not to management or the directors. You know, the  
8 management and directors may well have failed  
9 their fiduciary obligation as well. I was not  
10 asked to render an opinion in that regard. But  
11 even if they did, that's no reason for CSFB to  
12 violate any fiduciary obligation that it may have  
13 owed to the company and its creditors.

14 Q. Well, we know, don't we, that the board  
15 of Oakwood owed a fiduciary duty to the company?

16 A. Yes.

17 Q. And as you said, in the academic  
18 literature and maybe or maybe not even in the law  
19 there's some discussion about whether that  
20 fiduciary duty moves from being owed primarily to  
21 shareholders and onto creditors by the directors,  
22 right?

23 A. Yes.

24 Q. But it's the job --

Page 138

ALAN SHAPIRO

1 Would you agree with me from an  
2 economic point of view that it's the job of the  
3 directors to be making that judgment as time goes  
4 along about where their duties lie and how they  
5 should best carry out those duties?

6 A. Yes --

7 Q. Okay.

8 A. -- I agree with that.

9 Q. Here we know what the directors were  
10 deciding.

11 My question to you is, is it your  
12 opinion that the reasonable and reasonably prudent  
13 course for CSFB to have followed was to substitute  
14 its judgment on these matters for the judgment of  
15 the directors?

16 A. I believe so. Given that CSFB is the  
17 financial expert here it has a particular  
18 financial expertise. And as I said, there may  
19 well have been a failure on the part of the board  
20 of directors and management to exercise their  
21 fiduciary obligation to the company, but that's no  
22 reason for CSFB not to exercise its fiduciary  
23 obligation.

24 And to the extent that CSFB sees that

Page 139

ALAN SHAPIRO

1 this is an economically insolvent company engaged  
2 in value destroying activities, regardless of what  
3 management wanted to keep doing I think that CSFB  
4 should have exercised its independent judgment.

5 It may not make it very popular with  
6 the company, but if you have a fiduciary  
7 obligation your job is not to be popular, but to  
8 follow that obligation wherever it may take you.

9 Q. I think we've agreed, have we, that so  
10 far as you've been able to determine there was no  
11 factual information about Oakwood, its business,  
12 or its prospects that CSFB had that was not also  
13 available to the company?

14 A. As far as I know, that's correct.

15 Q. And I think we've -- I think we've  
16 agreed that you simply don't know anything at all  
17 about what financial or other expertise there was  
18 amongst the members of the board of directors?

19 A. That's correct.

20 Q. Okay. Do you know whether the board of  
21 directors was getting advice from anyone other  
22 than CSFB during 2001 and 2002?

23 A. I don't know. I think -- who was it --  
24 FTI that was brought in later in 2002, so...

Page 140

ALAN SHAPIRO

1 But prior to that I don't -- I'm not  
2 aware of anybody else providing financial advice  
3 to Oakwood or its board of directors or  
4 management.

5 Q. Okay. And we don't really know -- I  
6 think we've agreed -- how the world would have  
7 turned out differently if some different course of  
8 action had been followed starting in 2001.

9 A. That's correct.

10 Q. Okay. Did you make any attempt in your  
11 research, in your preparation of this report, to  
12 see, to research, to determine what other  
13 investment banking companies faced with similar  
14 situations did or didn't do?

15 MR. CASTANARES: Objection to form.

16 A. No, I have not.

17 Q. There were a number of companies in the  
18 manufactured housing industry that during this  
19 period of time were experiencing many of the same  
20 difficulties that Oakwood was; is that correct?

21 A. That's correct.

22 Q. Do you know whether those companies had  
23 financial advisers?

24 A. I don't know anything specifically. I

35 (Pages 137 to 140)

Page 141

Page 143

1 ALAN SHAPIRO

2 assume they probably did, but I don't know.

3 Q. Those other companies in the  
4 manufactured housing industry all would have been  
5 running securitization programs, weren't they?

6 A. I believe they would have.

7 Q. Okay.

8 A. Again, I don't know that for a fact,  
9 but it would make economic sense.10 Q. Did you make any determination -- any  
11 effort to determine whether the securitization  
12 advisers for any of those other companies shut off  
13 the securitization in the way you're suggesting  
14 CSFB should have done here?15 A. No. And that wouldn't necessarily be  
16 determinative or affect my opinion in any case,  
17 because the facts and circumstances of each  
18 company I presume would be unique.19 MR. WICKES: Okay. Get me this one,  
20 tab 19.

21 506, please.

22 (Exhibit 506, Multipage document  
23 entitled Credit Suisse First Boston  
24 Compliance Manual, marked for identification,  
25 as of this date.)

Page 142

1 ALAN SHAPIRO

2 Q. Professor, I've handed you what we've  
3 marked as Exhibit 506.4 I want you to tell me whether that is  
5 the CSFB compliance manual that is referred to in  
6 your report on pages 27 and 28.

7 (Witness looks at document.)

8 A. It looks like it.

9 Q. Okay. And you make reference in  
10 your -- on page 28 to the so called know your  
11 customer rule that's described in this account --  
12 in this document in Section 5 starting on the page  
13 that's Bates numbered 53089.

14 A. Yes.

15 Q. Okay. What kind of customers are the  
16 subject of those rules?

17 MR. CASTANARES: Objection to form.

18 A. In this case it would refer to retail  
19 customers, customers for stocks and bonds that the  
20 company might sell. I guess investment accounts.21 Q. The know your customer rules apply to  
22 retail accounts at a broker-dealer, right?

23 A. Yes.

24 Q. Does this manual apply in any respect  
25 to the relationship with a company like Oakwood

1 ALAN SHAPIRO

2 and the services Mr. Felt was providing?

3 A. Well, it doesn't -- I think the know  
4 your customer rule from a legal standpoint, my  
5 best understanding is that it only applies to  
6 accounts at broker-dealers. What I'm doing is  
7 using the notion of know your customer and saying  
8 that's a good rule for all transactions.9 Q. Ah. So you're taking the retail  
10 account know your customer rule and suggesting  
11 that it should be applied here to the relationship  
12 between CSFB and Oakwood that Mr. O'Driscoll was  
13 managing because it's a good rule?

14 A. It's a good guideline to follow.

15 Q. In your -- in the materials that you  
16 have reviewed do you see any indication that CSFB  
17 did not understand the financial situation at  
18 Oakwood?19 A. I would say quite the contrary. I  
20 believe that CSFB did understand the financial  
21 situation, and that's why I think it was  
22 inappropriate for it to continue with the  
23 securitization program and the warehouse lending  
24 facility on an as-is basis.

25 Q. You just think --

Page 144

1 ALAN SHAPIRO

2 A. Now that being said, I think one of --  
3 I think either Mr. Muir or Mr. Standish, I make a  
4 reference to this, who say that -- who argue that  
5 CSFB did not understand their situation. But my  
6 assessment is that CSFB did understand its  
7 customer.

8 Q. Okay. And they came to --

9 And you think they should have come to  
10 and shared with Oakwood a different conclusion  
11 about what actions Oakwood should have been taking  
12 starting sometime in 2001?13 A. Yes. The know your customer rule,  
14 which I think is in general a good idea, the  
15 purpose is not to get to know your customer,  
16 per se, but that's a means to an end, which is to  
17 provide reasonable advice given their economic  
18 circumstances. You first have to know your  
19 customer in order to be able to give reasonable  
20 advice.

21 Q. Right.

22 And your opinion here is that CSFB did  
23 know its customer and failed to give it the advice  
24 you think they should have given it?

25 A. Yes. And helped facilitate behavior

36 (Pages 141 to 144)

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Page 145

ALAN SHAPIRO

that I think was destructive of economic value.

Q. To an extent that is today impossible to measure?

A. I wouldn't say it's impossible to measure. I have not done that. Financial economists have a variety of techniques where you can get an estimate. You're never going to be -- get a perfect answer, but you can get -- come up with realistic approximations.

I've not -- I was not asked to do that and have not done that, and I've seen no other work that anybody has attempted to do in that regard.

MR. WICKES: Okay. Let's take a short break.

MR. CASTANARES: Sure.

THE VIDEOGRAPHER: Going off the record at 3:04.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 3:13.

MR. WICKES: Before I continue I just want to briefly say on the record we received sometime last week Dr. Shapiro's supplemental

Page 146

ALAN SHAPIRO

report. And we've indicated in correspondence with counsel that we expect to have some proceedings before the court about that. And we've indicated that because of the timing when we received it we didn't think we would be prepared to examine Dr. Shapiro about it today.

However, since we have covered most of what we want to cover with respect to the principal report, and since it's only about 3 o'clock in the afternoon, I'm going to ask Dr. Shapiro a few questions about this report. I will reserve in full our rights to proceed in front of the court, as we've suggested.

I don't ask, Tony, that you agree to any of that. I just want to say that by asking the doctor a few questions about this supplemental report I don't intend thereby to waive any positions we may have with respect to his report.

MR. CASTANARES: I'll just say that I recognize there has been correspondence regarding this matter and I have not been

Page 147

ALAN SHAPIRO

party to the correspondence. I believe a letter came to you from my office yesterday, which I have been unable to open up on my BlackBerry and I therefore don't know what it says. However, I can imagine, but --

MR. WICKES: Well, we have it. I can tell you -- I can I think fairly paraphrase the letter as saying we will huff and we will puff and we will blow your house down.

MR. CASTANARES: Yeah, similar to your letter in response.

However, I will say this, I don't believe you have any rights to reserve. But let us just agree that neither anything you say now or anything I say either creates or waives any rights that we might have and have at it.

MR. WICKES: Fine.

MR. CASTANARES: Good.

MR. WICKES: All right.

BY MR. WICKES:

Q. Dr. Shapiro, sometime after the completion of your report that we've been talking about as Exhibit 501 you were asked to prepare a

Page 148

ALAN SHAPIRO

supplemental report; is that right?

A. That's correct.

MR. WICKES: Let's just mark for identification Exhibit 507.

(Exhibit 507, Eight-page document entitled Supplemental Report of Alan C. Shapiro, Ph.D., dated 8/28/07, marked for identification, as of this date.)

Q. Is that your supplemental report of August 28th, 2007?

A. It is.

Q. All right. When were you first asked to prepare a supplemental report in this matter?

A. Well, it wasn't quite like that. I wasn't asked outright to prepare a supplemental report.

The way it took place is I was told that a case had recently come down which pointed to the importance of looking at market data. And I was sent a copy of the judge's decision in the case, Campbell, and I reviewed the case and said I agree with the judge. I was asked how difficult would it be to do a market value analysis on the company to determine whether it was economically

37 (Pages 145 to 148)

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Page 149

Page 151

1 ALAN SHAPIRO  
2 insolvent. And I pointed out that's pretty much  
3 bread and butter for a financial economist.  
4 And so I asked would you like me to  
5 write such a report?  
6 Because obviously it was going to cost  
7 the client money. And I don't recall who it was,  
8 whether it was -- I really don't recall who gave  
9 the go ahead, but somebody gave me the go ahead.  
10 And so I went ahead and wrote the report.  
11 Now, when was I -- as I said, it  
12 started with my receipt of the Campbell case. And  
13 that was maybe two months ago, or so, or  
14 thereabouts. Maybe three months, I'm not -- I'm  
15 not sure. I've been very busy the last few  
16 months. I don't have a good picture.  
17 Q. Who first called the Campbell case to  
18 your attention?  
19 A. Again, somebody from Stutman. I don't  
20 recall, it may have been Scott, it may have been  
21 Steve, Steve Ray. Maybe Mr. Castanares, I just  
22 don't remember.  
23 Q. Two or three months ago and you don't  
24 remember who you had the conversation with?  
25 A. I tell you one of the unfortunate

1 ALAN SHAPIRO  
2 also saw that effectively, you know, CSFB, as I  
3 mentioned, did several solvency analyses in its --  
4 in the various pitches that Mr. Felt made.  
5 But with regard to your question, I  
6 have no idea why -- well, I guess I do have an  
7 idea. I guess the idea is that rather than me  
8 rely on -- just on Mr. Tennenbaum's conclusion,  
9 that I guess it would strengthen my opinion if I  
10 actually looked at market data to come to that  
11 conclusion, that's my supposition. But other than  
12 that, I don't know.  
13 Q. Well, when --  
14 A. They didn't explain it to me.  
15 Q. When you got called by whoever it was  
16 you can't remember who called you and they said  
17 we'd like you to take a look at valuation from  
18 this other perspective, did you not say, well,  
19 isn't that Dr. Tennenbaum's job?  
20 A. No. I mean, this is something I was  
21 interested in. And as I said, market value  
22 analyses are bread and butter for financial  
23 economists.  
24 Q. I guess we could conclude, couldn't we,  
25 that your financial incentives would have been

Page 150

Page 152

1 ALAN SHAPIRO  
2 aspects of getting older is I have a lousy memory,  
3 a truly lousy memory.  
4 Q. Now, originally your assignment was to  
5 simply take as an assumption Mr. --  
6 Dr. Tennenbaum's conclusion that the company was  
7 insolvent whenever it was, by --  
8 A. September --  
9 Q. -- by September of 2001.  
10 A. -- of '01.  
11 Is there a question or can I comment?  
12 Q. I'm just -- I'm working on a question.  
13 A. Okay.  
14 Q. Memory is not the only thing that goes  
15 when you get older.  
16 Why was it that if the judgment was  
17 made that there was a different kind of solvency  
18 analysis needed that it wasn't Dr. Tennenbaum's  
19 job to do that?  
20 A. Oh. First of all, I want to say that I  
21 didn't just accept Dr. Tennenbaum's conclusion on  
22 faith. I did look -- I did review his report --  
23 well, I went through this before.  
24 Q. Right.  
25 A. I looked at some other information. I

1 ALAN SHAPIRO  
2 consistent with your preparing a supplemental  
3 report in the ways we talked about financial  
4 incentives before?  
5 A. That's correct.  
6 Q. Okay. And one of the things you tell  
7 us in this supplemental report is that during 2001  
8 and 2002 the company's ten-year publicly traded  
9 bond was trading at about 40 percent of its face  
10 value, right?  
11 A. Yes.  
12 Q. And that means, if I understand it,  
13 that that reflects what the market thought the  
14 value of those bonds was, taking into account the  
15 likelihood of eventual repayment and interest  
16 rates and the other things that affect value; is  
17 that right?  
18 A. Yes.  
19 Q. Okay. Now, assume with me -- I think  
20 you said you don't know what the ultimate recovery  
21 of the bondholders has been in the bankruptcy  
22 case; is that right?  
23 A. That's correct.  
24 Q. Okay. Then assume with me, if you  
25 will, that the ultimate recovery of the

38 (Pages 149 to 152)

Page 153

ALAN SHAPIRO

bondholders in the Oakwood bankruptcy case was between 45 and 50 cents on the dollar, okay?

A. Okay.

Q. Okay?

As opposed to the 40 cents on the dollar that it was trading at in 2001, okay?

A. Okay.

Q. All right.

A. You say you recovered between 40 --

Q. 45 and 50. Just assume --

A. -- 45 and 50 cents?

Q. Okay.

A. Okay.

Q. Doesn't that tell us that the value of the enterprise increased rather than decreased between 2001 and 2007?

A. Well, not necessarily. First of all, I'd like to know what happened to -- there's a time value of money. What happened to all the accrued interest between 2001 and 2007. In other words, it makes a real difference whether you get, say, 45 cents today or get it two years down the road.

Q. Right.

Page 154

ALAN SHAPIRO

A. Now that's one thing.

For another thing it may well be -- well, market expectations play a critical role in asset pricing, bonds, stocks, and so on. And it may well be that the market was heavily -- more heavily discounting the bonds because it anticipated that the company would persist in its value destroying activities. And once the company was put into bankruptcy and started to be run on behalf of creditors as opposed to on behalf of shareholders, it could well be in the process of -- you know, since the market had anticipated the continuance of value destroying activities and now that was ended the value would go up.

Q. Do you know whether that's the case?

A. No. I'm just saying that it's not automatically the case that the enterprise just happened to increase in value. It could well be that value destroying activities were ended and that would have the same effect on the value of the enterprise, namely it would increase the market's estimate of the enterprise's valuation.

Q. There wasn't anything to the best of your knowledge secret, was there, about what

Page 155

ALAN SHAPIRO

Oakwood was doing with its business in 2001 and 2002?

A. Not as far as I know.

Q. Okay. And there wasn't anything secret about the role that CSFB was playing with respect to the securitizations and the warehouse?

A. No.

Q. Those facts were known to the market.

In fact, as I think you've just said, you characterized them as value destroying activities, but you said you think the market probably reflected that it knew those activities were going on and was taking them into account.

A. That's correct.

Q. Okay. Do you now have an opinion about when Oakwood became insolvent or do you now back up to June 30th, 2000 your opinion as to when the company was insolvent?

A. Sure.

The company was economically insolvent no later than 6/30/2000. I don't know just when it became economically insolvent. You know, the data indicate that it was solvent as of the end of March 2000. Sometime during that quarter, during

Page 156

ALAN SHAPIRO

the second quarter of 2000, it became insolvent. I can't give you a better estimate because I only have quarter end data on the debt on the balance sheet.

Q. So sometime between March 30th and June 30th of 2000 the company went from being solvent to insolvent in your opinion?

A. Yes.

Q. You've used repeatedly today the expression economically insolvent, do you mean by that something different from what Mr. Castanares and I would mean by just saying insolvent?

MR. CASTANARES: Why don't you tell him what you mean.

A. Well, when I say economically insolvent I mean that the market value of the enterprise is less than the face value of its debt, that's what I mean by economically insolvent. You may -- I've heard terms such as cash flow insolvent, and so on. This is the definition that I'm using.

Q. I'm sorry, tell me that definition again.

A. Market -- that when the market value of the enterprise is less than the face value of the

39 (Pages 153 to 156)

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Page 157

ALAN SHAPIRO

enterprise's debt that enterprise is economically insolvent.

Q. So whenever --

Is it correct to say from that, that in your view whenever a corporation's debt is trading at a more than marginal discount to its face value that the corporation is economically insolvent?

A. No.

Q. I'm sorry, I thought that's what you just said.

A. No, I said the market value of the enterprise. And the market value of the enterprise is equal to the market value of the claims against that enterprise. And those claims come in the form of debt and equity. So as long as the market value of the equity is greater than the discount on the -- in the market value of the debt, I would say that enterprise still is economically solvent.

Q. If debt has the first claim on the assets why would equity ever have a value greater than the discount on the debt?

A. Well, because there's some probability of bankruptcy. And meanwhile -- and the prospect

Page 158

ALAN SHAPIRO

of bankruptcy means that equity starts acting much more like a call option on the assets of the business. And so part --

Q. I'm sorry. Go ahead.

A. Part of the value of the debt is the value of that call option on the assets of the company, so...

Well, maybe I ought to let you ask another question, if there is.

Q. I understand that there -- I think I understand. And I know this is a lawyer trying to understand economics, which is always difficult.

But as I understand it in economic theory, the reason that the value of the equity never goes below zero is that it's always got some option value.

A. Yes.

Well, it doesn't go below -- the reason -- no, the real reason it never goes below zero is because of limited liability. If there were unlimited liability it could well go below zero.

Q. The reason it doesn't -- the reason a company's equity retains some value, no matter how

Page 159

ALAN SHAPIRO

insolvent the company is, is there is some option value there?

A. Well, it could be zero. It could be deep enough that there's absolutely --

Q. Correct.

A. -- no value. But the reason that it -- ordinarily it maintains some value, even if a penny or two, is because of the option value, the possibility that something may turn around.

Q. When the market value of the company, which is the sum of the market value of its debt and the market value of its equity, is below the face amount of the debt that's when the company is economically insolvent?

A. Yes.

Q. Okay. And is it your opinion that whenever that point is reached it is the responsibility of people who are dealing with the company -- third parties who are dealing with the company to stop allowing the company to continue on the course it's been?

A. No. It depends whether they have a fiduciary obligation to that company or not. If they have no fiduciary obligation, then they can

Page 160

ALAN SHAPIRO

act in their own self interest.

Q. Well, I thought you told me that the assumption that you made that CSFB had a fiduciary duty actually didn't change your conclusion about CSFB's performance.

A. Right. What I said is that if CSFB did not have a fiduciary obligation, the fact that it continued to facilitate value destroying activities means that it did not behave in a reasonable or a reasonably prudent manner. Whether that has any legal significance is a totally different issue.

MR. WICKES: All right. Could you read that answer back to me.

(Record read.)

Q. Now, there were other parties who would have also been in 2001 in a position to cause Oakwood to stop operating the way it was operating; isn't that right?

A. There may have been. I really didn't -- didn't look at that.

Q. Well, they're in the business of manufacturing mobile homes, right?

A. Yes.

40 (Pages 157 to 160)

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Page 161

ALAN SHAPIRO

Q. So they need to buy raw materials to do that with.

A. That's correct.

Q. And their raw material suppliers are presumably supplying those materials on some kind of trade credit terms.

A. Yes.

Q. And if a major supplier of -- I don't

know what they used -- aluminum refused to continue to sell aluminum to the company that would have had the same effect as stopping the securitizations, wouldn't it?

A. That could well be the case provided that there were no other suppliers willing to step in.

Q. Okay. So was it -- would it have been the duties of the raw material suppliers to stop extending trade credit to the company?

A. I'm not saying that anybody had a fiduciary obligation. I'm just -- I'm making that assumption that CSFB had a fiduciary obligation. And to the extent that it did, then I think it did not carry it out -- carry that fiduciary obligation out. If it had no fiduciary

Page 162

ALAN SHAPIRO

obligation, then whatever it did is quite irrelevant, I think.

Q. Okay. How do we know that had CSFB stopped providing the warehouse and securitization facilities that some other financial institution wouldn't have stepped in to do it?

A. Well, I don't know that for sure. I did see in one or two of the depositions some statement to the effect that it was difficult to replace B of A or they were having some difficulty, I think. Whether somebody else would have stepped in if they had gotten the securitization business along with the requirement to provide a warehouse facility, in other words, some type of tie in, that may be the case. I don't know. I don't know if somebody would have stepped in or not.

Q. Did you make any attempt to determine whether there would have been alternative financing available?

A. No.

MR. WICKES: That's all I have. Thank you, Doctor.

THE WITNESS: Thank you.

Page 163

ALAN SHAPIRO

MR. CASTANARES: I have a couple of questions for Dr. Shapiro.

EXAMINATION BY

MR. CASTANARES:

Q. Dr. Shapiro, in preparing -- in doing the work preparatory to the creation of your supplemental report did you attempt to follow the methodology set forth in the Campbell Soup case?

A. I did.

Q. And did that methodology involve as a first step determining the market value of a share of the company multiplied by the number of the shares outstanding?

A. It did.

Q. And did you have a source of data available to you to determine the market value of a share of the company?

A. Yes.

Q. What was that source?

A. The CRISP database, that's the Center for Research in Securities Prices at the University of Chicago.

Q. Is that a source that is generally relied upon by professionals in your business?

Page 164

ALAN SHAPIRO

A. Yes, it is.

Q. Is it a source generally available to members of the public who might wish to obtain that information?

A. Yes.

Q. And did you consider it reliable at the time.

A. I did.

Q. And once you had that data from the CRISP database, in order to perform that step of the analysis was it necessary to do anything more than multiply that number times the number of shares outstanding?

A. To come -- not to come up with a market value of equity at each point in time.

Q. And then was the next step then to determine the market value of debt?

A. Yes.

Q. And was that determined by reference to some data indicating the market value of the company's debt?

A. Yes.

Q. What was the source of that data?

A. I had data on the 2009 bond, which came

41 (Pages 161 to 164)

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Page 165

ALAN SHAPIRO

1 from a Web site run by J.P. Morgan.

2 Q. And is that -- the data from that Web  
3 site generally available to members of the public?

4 A. Yes.

5 Q. And is the data from that Web site  
6 generally relied upon by people in your business?

7 A. As far as I know.

8 Q. And was the next step in the analysis  
9 then to multiply that figure times the face value  
10 of the company's debt outstanding?

11 A. Yes, with the assumption that since I  
12 didn't have market prices for the 2004 maturing  
13 debt I assumed that it was the same. And that  
14 assumption was supported by the data provided by  
15 CSFB on three particular dates in 2001 and 2002,  
16 which showed that both bonds were trading at  
17 virtually identical discounts.

18 Q. All right. And was the next step in  
19 the analysis then to add together the two numbers  
20 which were the figure you had found for the market  
21 value of the equity plus the market value of the  
22 debt?

23 A. Yes.

24 Q. And was the final step in the analysis  
25

Page 167

ALAN SHAPIRO

1 data, I went ahead and looked at prior data as  
2 well.

3 And based on that determined that as  
4 far back as June 30th, 2001 Oakwood would have  
5 been economically insolvent. And that supported  
6 my use -- or corroborated my use of  
7 Dr. Tennenbaum's conclusion.

8 Q. Right.

9 In examining Dr. Tennenbaum's report --  
10 now aside from the market data approach suggested  
11 by the Campbell Soup case, but just in examining  
12 Dr. Tennenbaum's report at an earlier time, in  
13 terms of making your opinion based upon the  
14 assumption of his conclusion of insolvency in  
15 September of 2001, did you examine the studies  
16 that he undertook to reach that conclusion?

17 A. I did.

18 Q. And did you have any difficulty  
19 following the steps that Dr. Tennenbaum had taken  
20 in that analysis?

21 A. No.

22 Q. Did you -- were you able to determine  
23 from his report whether or not the analysis that  
24 he undertook was of the type commonly used by  
25

Page 166

ALAN SHAPIRO

1 then to compare that figure with the face value of  
2 the company's debt outstanding?

3 A. That's correct.

4 Q. And did you determine the face value of  
5 the company's debt outstanding from publicly  
6 available documents?

7 A. Yes, its various quarterly findings.

8 Q. All right. And did that then lead you  
9 to a conclusion as to whether or not this method  
10 of valuation corroborated your reliance upon  
11 Dr. Tennenbaum's opinion of the company's  
12 insolvency in September of 2001?

13 A. It did.

14 Q. And in examining this data further did  
15 it occur to you to test it further to see whether  
16 or not the data would support conclusions as to  
17 company -- the company's solvency or insolvency at  
18 times other than 2001?

19 A. Yes. I wanted -- Dr. Tennenbaum did  
20 his analysis as of September 2001 just to make  
21 sure that it wasn't, you know, some happenstance  
22 or some -- or a result of the particular cash flow  
23 forecast that he had at that time. I wanted to --  
24 in other words, that it wasn't just a fluke of the  
25

Page 168

ALAN SHAPIRO

1 professionals in your business?

2 A. Yes.

3 Q. Was it?

4 A. It was.

5 Q. Did you see anything in  
6 Dr. Tennenbaum's report that you were unable to  
7 understand?

8 A. No.

9 MR. CASTANARES: I have no further  
10 questions.

11 MR. WICKES: Nothing further.

12 MR. CASTANARES: Thank you.

13 THE WITNESS: Thank you.

14 MR. CASTANARES: Let's go off the TV  
15 record anyway. And on the audio record at  
16 least --

17 THE VIDEOGRAPHER: Going off the  
18 record, end of tape 3 at 3:42.

19 MR. CASTANARES: Whatever our usual  
20 stipulation is as to signing time, and so  
21 forth. I forget what we agreed upon,  
22 whatever it is.

23 MR. WILLIAMSON: The court reporter  
24 will send it to you for him to sign and then  
25

42 (Pages 165 to 168)

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Page 169

1 ALAN SHAPIRO  
2 we hold onto the original signature.  
3 MR. CASTANARES: Oh, good.  
4 Off the record.  
5 (Time noted: 3:43 p.m.)  
6

7 ALAN C. SHAPIRO  
8 Subscribed and sworn to before me  
9 this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

10  
11 (Notary Public) My Commission Expires:  
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Page 171

1  
2 WITNESS: \_\_\_\_\_  
3 DATE(S): \_\_\_\_\_  
4 CASE: \_\_\_\_\_  
5 I wish to make the following changes, for the  
6 following reasons:  
7 PAGE LINE  
8 CHANGE FROM: \_\_\_\_\_  
9 CHANGE TO: \_\_\_\_\_  
10 REASON: \_\_\_\_\_  
11 CHANGE FROM: \_\_\_\_\_  
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13 REASON: \_\_\_\_\_  
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24 CHANGE TO: \_\_\_\_\_

25 Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007.

Page 170

1  
2 \*\*\*  
3 ACKNOWLEDGEMENT OF DEPONENT  
4 I, \_\_\_\_\_, do hereby  
5 acknowledge that I have read and examined the  
6 foregoing testimony, and the same is a true,  
7 correct and complete transcription of the  
8 testimony given by me, and any corrections appear  
9 on the attached Errata sheet signed by me.  
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15 (DATE) (SIGNATURE)  
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Page 172

1  
2 CERTIFICATE  
3 STATE OF NEW YORK )  
4 : ss.  
5 COUNTY OF NEW YORK )  
6

7 I, DONALD R. DePEW, a Registered  
8 Professional Reporter, Certified Realtime Reporter  
9 and Notary Public within and for the State of  
10 New York, do hereby certify:

11 That ALAN C. SHAPIRO, the witness whose  
12 deposition is hereinbefore set forth, was duly  
13 sworn by me and that such deposition is a true  
14 record of the testimony given by the witness.

15 I further certify that I am not related  
16 to any of the parties to this action by blood or  
17 marriage, and that I am in no way interested in  
18 the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto set  
20 my hand this 17th day of September, 2007.

21  
22 DONALD R. DePEW, RPR, CRR  
23  
24  
25

43 (Pages 169 to 172)

Page 173

1			
2	EXHIBITS		
3	NO DESCRIPTION ID		
4	501 3		
5	Multipage document entitled		
6	Report of Alan C. Shapiro,		
7	Ph.D., dated 4/30/07		
8	502 117		
9	Multipage document entitled		
10	Presentation to Oakwood		
11	Homes Corporation, dated		
12	6/26/01		
13	503 128		
14	Multipage document entitled		
15	Presentation to Oakwood		
16	Homes Corporation, dated		
17	8/9/01		
18	504 131		
19	Multipage document entitled		
20	Oakwood Homes Discussion		
21	Materials, March 2002		
22	505 133		
23	Multipage document entitled		
24	Oakwood Homes Corporation,		
25	Presentation to the Board		
	of Directors, dated 8/19/02		
	506 142		
	Multipage document entitled		
	Credit Suisse First Boston		
	Compliance Manual		
	507 148		
	Eight-page document		
	entitled Supplemental		
	Report of Alan C. Shapiro,		
	Ph.D., dated 8/28/07		

Page 174

1		
2	INDEX OF WITNESS	
3	ALAN C. SHAPIRO	
4	BY MR. WICKES . . . . .	4
5	BY MR. CASTANARES . . . . .	163
6	REQUESTS:	
7	Mr. Wickes . . . . .	20
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

44 (Pages 173 to 174)

A				
abilities 98:5	acquisitions 52:5	144:17,20,23	12:1 13:1 14:1,9	152:1 153:1 154:1
able 4:19 83:20	act 63:3 119:20	advise 118:23	15:1 16:1 17:1	155:1 156:1 157:1
96:9 112:20	160:2	120:2	18:1 19:1 20:1	158:1 159:1 160:1
127:17 139:11	acted 55:7,8,9	advised 59:3 60:12	21:1 22:1 23:1	161:1 162:1 163:1
144:19 167:23	120:20	62:4 134:20 135:2	24:1 25:1 26:1	164:1 165:1 166:1
ABS 54:8,18 74:22	acting 63:7 158:2	advisement 20:18	27:1 28:1 29:1	167:1 168:1 169:1
100:25 101:22	action 12:12 24:9	adviser 55:10 56:11	30:1 31:1 32:1	169:7 172:11
102:4 103:14	98:21,25 99:7,10	59:5 62:6 99:13	33:1 34:1 35:1	173:5,22 174:3
106:25 110:20	101:14 102:13	100:5,11 105:4,15	36:1 37:1 38:1	alignment 71:3
absence 67:8	126:24,25 130:14	105:21,24 119:7	39:1 40:1 41:1	Allen 10:2,10 11:5
130:13	140:9 172:16	121:10	42:1 43:1 44:1	allowing 159:21
absent 32:10	actions 102:15	advisers 140:24	45:1 46:1 47:1	alternative 99:7
absolutely 33:6	106:13 127:7	141:12	48:1 49:1 50:1	126:7 127:7,11,13
116:24 159:5	144:11	advising 62:17	51:1 52:1 53:1	162:20
ABSs 74:15 110:8	activities 50:16	advisory 57:6	54:1 55:1 56:1	alternatives 68:10
academic 38:10,25	74:10 83:19 120:4	113:21	57:1 58:1 59:1	99:19 119:21
39:8,19,22 40:17	131:3 139:3 154:9	affect 6:15 80:16	60:1 61:1 62:1	125:4 127:15
46:12 49:9 137:18	154:14,20 155:12	141:16 152:16	63:1 64:1 65:1	135:5,9,14,20
accelerate 68:8	155:13 160:10	affiliates 1:13	66:1 67:1 68:1	aluminum 161:10
120:10	activity 74:18	affirmatively	69:1 70:1 71:1	161:11
accelerated 120:7	actors 52:16	107:12	72:1 73:1 74:1	Alvarez 21:25
120:12	actual 16:9 76:17	afforded 57:12	75:1 76:1 77:1	America 86:11
accept 33:17	add 165:20	afternoon 146:12	78:1 79:1 80:1	87:11,13,14 89:9
150:21	addition 84:6 109:8	agent 55:8,16	81:1 82:1 83:1	90:7,9 91:4 92:15
accepted 32:4,15	additional 45:10	aggregated 82:2	84:1 85:1 86:1	104:9
access 57:12,22	46:11 125:5	ago 20:12 22:4	87:1 88:1 89:1	Americas 1:21 2:12
58:11 72:14 80:24	135:18 136:20	50:14 69:24 76:22	90:1 91:1 92:1	3:17
81:5,17 83:9,15	addressed 132:10	149:13,23	93:1 94:1 95:1	amount 11:2 26:12
84:4 85:24 93:5	addresses 39:22	agree 60:9 66:5,12	96:1 97:1 98:1	26:15 42:17 80:15
109:10 110:23	40:20	102:3,9 109:25	99:1 100:1 101:1	159:14
accommodations	adequately 19:25	113:2,11 114:12	102:1 103:1 104:1	amounts 126:16
93:17 94:2	Administered 1:5	118:7 138:2,9	105:1 106:1 107:1	analyses 9:21 41:19
account 61:2	adopt 136:6	146:17 147:15	108:1 109:1 110:1	53:25 151:3,22
142:11 143:10	Adv 1:7	148:23	111:1 112:1 113:1	analysis 11:6 43:10
152:14 155:14	adverse 63:3	agreed 28:20 95:15	114:1 115:1 116:1	43:21,24,25 44:9
accounts 142:20,22	advice 56:20 57:2	139:10,17 140:7	117:1 118:1 119:1	48:15 50:24 51:2
143:6	59:11,14,24,25	168:22	120:1 121:1 122:1	85:11 88:22
accrued 153:21	60:3,5,16,18,23	agreement 1:22	123:1 124:1 125:1	112:19 126:6
accruing 82:25	61:2,13 63:7,9,16	105:5,16,25 122:4	126:1 127:1 128:1	127:5,5,23 135:4
accurate 80:9	74:17 84:9 97:7	Ah 89:17 92:10	129:1 130:1 131:1	135:7,16,19
113:3	100:18 103:23	143:9	132:1 133:1 134:1	136:20 148:24
acknowledge 170:5	106:4,9,10,17,18	ahead 149:9,9,10	135:1 136:1 137:1	150:18 164:12
ACKNOWLED...	106:23 107:7,12	158:5 167:2	138:1 139:1 140:1	165:9,20,25
170:3	108:8 112:25	al 1:4 3:9,10	141:1 142:1 143:1	166:21 167:21,24
acquired 50:16	115:6 120:7,10,13	Alan 1:19 3:1,3,8	144:1 145:1 146:1	analysts 108:12
	128:13 134:11	4:1 6:1 7:1 8:1	147:1 148:1,7	analyzed 93:5
	139:22 140:3	9:1 10:1 11:1	149:1 150:1 151:1	134:15

<b>analyzing</b> 57:9	103:6,22 106:20	<b>assume</b> 4:15,25	134:12 148:11	51:10,10 113:21
<b>and/or</b> 99:6	107:8,10 125:18	27:2 30:4,10 31:5	<b>automatically</b>	140:14
<b>Angeles</b> 2:7	167:11	36:21 37:2 44:2	65:21 154:18	<b>bankrupt</b> 65:24
<b>answer</b> 6:5 31:24	<b>asked</b> 4:25 6:24 7:5	49:12 85:20 92:5	<b>available</b> 48:14	<b>bankruptcy</b> 1:2
34:17 48:16 63:20	7:12,15,23 14:2	117:23 118:3	62:24 86:2 109:9	5:25 19:17 59:4
63:22,24 106:16	23:22 24:12 27:2	141:2 152:19,24	135:10,17 139:14	62:5,17,19 64:22
145:9 160:15	27:5 28:6,9 30:10	153:11	162:21 163:17	65:4 71:23 75:7
<b>answered</b> 92:21	31:5 36:21,25	<b>assumed</b> 29:17	164:3 165:4 166:7	88:6 89:23 90:19
<b>anticipated</b> 154:8	37:18 41:2 43:11	43:12 89:10,15	<b>Avenue</b> 1:20 2:6,12	94:4 96:10 99:24
154:13	43:23 44:2 47:18	165:14	3:17	105:9 108:4
<b>anybody</b> 18:13	59:10 60:15 61:12	<b>assuming</b> 136:14	<b>avoid</b> 88:7	109:24 110:6
53:19 59:10,11	73:25 85:20 92:4	<b>assumption</b> 5:7 6:2	<b>aware</b> 51:19 58:15	113:9 120:3,19
60:14,15 103:24	92:21 99:11	6:7,25 7:5,12,15	125:22 140:3	121:2 124:20
124:13 140:3	110:22 137:11	7:24 27:6 28:7,23	<b>a)04-57060</b> 1:7	125:2,6,7,9,12,17
145:13 161:20	145:11 147:25	32:25 33:2 36:21	<b>A-I-I-e-n</b> 10:2	125:24 134:8,13
<b>anytime</b> 101:18	148:13,16,23	37:11,16,18 39:16	<b>A-t-u-l-y-a</b> 9:16	134:20 135:3
<b>anyway</b> 168:16	149:4	41:2,6 72:4 92:23	<b>a.m</b> 1:17 2:23	137:2 152:21
<b>apart</b> 29:2 123:13	<b>asking</b> 31:25 32:23	122:7 124:15		153:2 154:10
<b>appear</b> 170:8	146:19	150:5 160:4	<b>B</b>	157:25 158:2
<b>Appendix</b> 46:3	<b>aspect</b> 130:24	161:22 165:12,15	<b>B</b> 46:3 47:20,22	<b>banks</b> 50:13 52:3
49:17	<b>aspects</b> 27:23 123:8	167:15	48:13,19 49:4,12	52:12 56:19 72:14
<b>applied</b> 143:11	150:2	<b>assumptions</b> 120:5	49:16,17 112:11	73:6,22 83:12
<b>applies</b> 143:5	<b>assessed</b> 112:23	<b>assure</b> 41:20 44:7	162:11	104:5 111:10,21
<b>apply</b> 142:21,24	135:9	<b>as-is</b> 59:22 143:24	<b>back</b> 14:2 17:19	111:22
<b>approach</b> 167:11	<b>assessment</b> 112:17	<b>attached</b> 170:9	25:16 26:24 44:19	<b>barrelhead</b> 66:4
<b>appropriate</b> 63:9	144:6	<b>attempt</b> 114:7	52:10 57:3,10	<b>based</b> 25:22 36:24
63:10 135:14	<b>asset</b> 154:5	126:22 130:3	59:16 61:9,22	41:6 49:21 57:4
<b>approximately</b>	<b>assets</b> 81:17 88:16	140:11 162:19	62:2 65:25 69:25	58:4 59:18 60:24
16:8 25:12,20	88:18 109:15	163:8	93:6 95:8,12	77:4 120:5,17
78:21	157:22 158:3,7	<b>attempted</b> 80:12	117:8 145:21	167:4,14
<b>approximation</b>	<b>asset-backed</b> 30:18	145:13	155:17 160:15	<b>bases</b> 41:17
25:15 49:14	31:2 54:8 74:15	<b>attempting</b> 59:18	167:5	<b>basically</b> 28:3
<b>approximations</b>	76:12,19 77:3	<b>attention</b> 108:12	<b>backed</b> 93:12	50:21 71:19 75:6
145:10	78:9 86:15 110:2	109:3,6 149:18	<b>background</b> 10:23	75:7 86:18 87:4
<b>April</b> 4:23 16:7,22	<b>assignment</b> 77:8	<b>attitude</b> 136:7	22:19 51:2 56:18	87:25 88:19
41:10,25	150:4	<b>attorneys</b> 2:4,10	97:15	121:16
<b>argue</b> 144:4	<b>assignments</b>	23:22	<b>balance</b> 103:10	<b>basis</b> 24:15 27:12
<b>argumentative</b>	129:10	<b>Atulya</b> 8:22 9:14	112:4 156:4	36:19 56:17 59:22
70:23	<b>assist</b> 11:11	10:8,17 12:6	<b>bank</b> 50:8,18,20	62:23 79:21 98:12
<b>arithmetic</b> 26:6	<b>assistance</b> 11:15	13:10,11,14	52:4 58:11 72:21	99:16 101:7
<b>arrangement</b> 88:25	105:8	<b>audio</b> 168:16	73:2,10 86:11	143:24
<b>arrangements</b> 90:2	<b>assistant</b> 10:12	<b>audit</b> 97:7	87:11,13,14 89:9	<b>Bates</b> 46:16,24 47:3
<b>articles</b> 46:12 49:9	<b>associated</b> 88:8	<b>August</b> 26:10 56:15	90:6,9 91:4 92:14	118:12 142:13
72:23 74:4 98:17	136:23	59:6 62:7 100:6	104:9 108:8 111:7	<b>bearing</b> 84:11
<b>aside</b> 83:17 97:6	<b>associates</b> 8:21 9:8	105:2,3,16,22	111:25 115:22	<b>beauty</b> 21:13,15
98:24 99:15	25:19	106:7,21 128:4	<b>banker</b> 72:16 83:14	<b>becoming</b> 95:17,18
100:12,15 102:25	<b>association</b> 89:2	132:24 133:19	<b>banking</b> 1:8 50:15	<b>began</b> 7:6,8,19 16:8



16:14 57:7,8 77:8 78:17,18 <b>beginning</b> 49:19 61:23 107:17 117:9 131:19 <b>begins</b> 3:6 72:10 <b>behalf</b> 19:22 154:11,11 <b>behave</b> 5:18 6:21 68:19,25 69:3,5 69:13 72:12 160:10 <b>behaved</b> 6:20 33:5 67:9 68:20,25 69:10 <b>behaving</b> 66:25 <b>behavior</b> 5:13 6:23 24:11 63:10 66:23 67:5 68:8 69:17 144:25 <b>believe</b> 6:9 7:10,25 9:24 17:2 19:21 22:6 25:5 28:19 30:5 33:10 36:4 39:24 40:3 42:5 43:9 46:20 48:24 50:7,12 52:8 53:17 54:8 64:16 65:6 67:13 74:16 74:18 76:20 88:23 90:10 91:7,11 93:11 103:25 106:9 107:23 108:20 109:2,5 112:14 120:17 124:6 128:15 138:17 141:6 143:20 147:2,14 <b>believed</b> 63:17,19 65:3,24 <b>believes</b> 79:17 <b>beneficial</b> 91:10 <b>benefits</b> 112:17 <b>best</b> 4:19 19:13 25:15 28:12 45:13 47:10 48:16 49:15 63:3 78:4 90:8	121:6 123:11 124:2 129:20 138:6 143:5 154:24 <b>better</b> 9:15 68:5 126:12 136:3,8 156:3 <b>bill</b> 12:25 13:2 70:16 <b>billed</b> 25:7 26:7,8 26:15 <b>billings</b> 25:9,18,23 <b>billion</b> 78:20 <b>Bills</b> 14:4 <b>bit</b> 29:2 36:24 49:25 <b>BlackBerry</b> 147:5 <b>blood</b> 172:16 <b>blow</b> 147:10 <b>blown</b> 44:9 <b>board</b> 40:8,10,11 40:12,14,14 86:2 96:20,23 97:7,19 97:24 99:6,18,23 104:4 107:22 112:10 133:14,18 136:11 137:15 138:20 139:19,21 140:4 173:16 <b>boards</b> 109:3 <b>bond</b> 152:9 164:25 <b>bondholders</b> 22:10 36:13 37:3,12 152:21 153:2 <b>bonds</b> 35:18,25 36:5 142:19 152:14 154:5,7 165:17 <b>borrowed</b> 76:3 <b>borrower</b> 94:2,3 <b>borrowers</b> 110:19 <b>Boston</b> 1:7,8,10,10 1:12 3:10 19:9 23:15 50:5,16,18 141:23 173:19 <b>bottom</b> 101:11 109:7 112:15	<b>bounce</b> 84:7 <b>boxes</b> 20:21 44:25 <b>boy</b> 43:17 <b>bracket</b> 52:4 <b>breach</b> 91:3 <b>bread</b> 149:3 151:22 <b>break</b> 29:2 61:17 94:7 106:15 116:23 123:13 145:16 <b>bridge</b> 86:19 <b>bridged</b> 86:23 <b>briefly</b> 10:4 145:24 <b>bringing</b> 24:9 <b>broke</b> 96:13 <b>broker-dealer</b> 142:22 <b>broker-dealers</b> 143:6 <b>brought</b> 42:21 139:25 <b>build</b> 60:7 <b>bulge</b> 52:3 <b>bundle</b> 75:7 <b>business</b> 4:14 56:19 60:21,22 63:8 90:25 91:9 95:24 96:3,9 98:8,22 100:23 101:19 103:5 107:14 121:16 123:9,10 126:16,20 135:23 139:12 155:2 158:4 160:23 162:14 163:25 165:7 168:2 <b>businesses</b> 106:14 106:19 <b>business-as-usual</b> 91:21 <b>busy</b> 149:15 <b>butchering</b> 52:19 <b>butter</b> 149:3 151:22 <b>buy</b> 86:20 90:21 161:2 <b>buyer</b> 109:16	<b>buying</b> 82:4,8 87:5 128:13 <b>B2</b> 75:20 78:7 131:23 132:4  <b>C</b> <b>C</b> 1:19 2:2 3:3 4:6 14:9 95:4 148:7 169:7 172:2,2,11 173:5,22 174:3 <b>calendar</b> 23:2,4 <b>California</b> 2:7 11:25 <b>call</b> 21:8 32:2,13 52:3 76:6 125:9 129:11 158:3,7 <b>called</b> 4:6 12:7 24:18 72:18,19 76:8 79:4 93:20 133:18 142:10 149:17 151:15,16 <b>calling</b> 31:23 32:19 36:10 64:6 <b>calls</b> 17:11 33:15 38:23 42:23 45:7 84:25 <b>Campbell</b> 148:22 149:12,17 163:9 167:12 <b>Canada</b> 10:24 <b>capable</b> 97:25 <b>capacity</b> 72:16 98:18 100:7 <b>capital</b> 52:7 <b>care</b> 27:23,25 <b>careful</b> 57:25 108:12 <b>carefully</b> 11:3 85:15 93:3 <b>carry</b> 138:6 161:24 161:24 <b>case</b> 1:4 3:11 4:24 10:19 19:17 21:21 22:13,17 30:3,15 36:4 45:6,14 47:13 49:21 51:23 55:8 66:11 67:12	69:15 70:9,12,16 70:20 71:2,9 75:19 79:4,14 80:3,17 82:13 90:11 123:25 128:15 141:16 142:18 148:19,22 148:22 149:12,17 152:22 153:2 154:16,18 161:14 162:16 163:9 167:12 171:3 <b>cases</b> 10:20,23 23:21 45:15 <b>cash</b> 66:3 75:10,15 156:20 166:23 <b>cast</b> 8:8 <b>Castanares</b> 2:8 4:2 4:2 5:9 8:11 20:17 26:22 30:14 31:15,22 32:18 34:8,15,17 35:14 36:9 37:4,21 38:22 39:15 42:23 45:7 51:14 53:6,8 53:23 61:18 63:21 64:4 66:22 68:17 70:22 71:18 84:25 88:15 92:21 94:9 96:24 117:4 125:15 127:3 128:14 133:3,7 134:24 140:16 142:17 145:17 146:23 147:11,20 149:21 156:12,14 163:2,5 168:10,13 168:15,20 169:3 174:5 <b>cause</b> 160:18 <b>causes</b> 31:14 <b>Center</b> 163:21 <b>cents</b> 153:3,6,12,23 <b>Century</b> 42:10 <b>CEO</b> 40:8,11,13 117:24 <b>certain</b> 6:21 18:5
--	---	--	---	---



66:16 90:24 115:24 <b>certainly</b> 6:10 57:8 69:2,4 70:25 82:20 102:22 114:20 120:24 121:2 <b>certainty</b> 67:12 <b>Certified</b> 172:8 <b>certify</b> 172:10,15 <b>cetera</b> 113:9,10 119:2,2 <b>CFO</b> 117:24 <b>chain</b> 77:10 <b>chairman</b> 40:12 <b>change</b> 38:12 66:2 68:8 122:14 123:2 124:20 136:21 160:5 171:5,6,7,8 171:9,10,11,12,13 171:14,15,16,17 171:18,19,20,21 171:22 <b>changed</b> 50:17 <b>changes</b> 171:3 <b>changing</b> 59:20 <b>Chapter</b> 1:3 133:24 134:3,7 <b>characterization</b> 136:6 <b>characterized</b> 155:11 <b>chart</b> 30:16 <b>check</b> 80:21 112:4 <b>Chicago</b> 163:23 <b>circumstances</b> 63:11 91:18,19 92:14 96:18 98:19 136:16 141:17 144:18 <b>citation</b> 73:14 <b>citations</b> 73:13,15 73:16 <b>cite</b> 72:17 74:4 79:2 80:15 100:9 <b>City</b> 42:10 <b>claim</b> 157:21	<b>claimants</b> 32:7 68:7 <b>claims</b> 75:9 121:14 121:21 125:7,25 157:15,15 <b>Clara</b> 10:9 <b>clarify</b> 131:21 <b>class</b> 93:19 <b>clear</b> 24:4,8 59:24 74:13 115:2 124:5 <b>clearly</b> 80:11 <b>client</b> 149:7 <b>clients</b> 62:17 <b>close</b> 56:9 <b>closely</b> 10:18 <b>collapsed</b> 90:12 95:25 96:4,5 <b>colleague</b> 10:17 <b>colleagues</b> 10:6 73:17 <b>combination</b> 46:4 50:7,18 <b>come</b> 13:2 21:5 41:12 47:16 59:16 74:2 87:3 116:4 124:18 130:16 144:9 145:9 148:19 151:10 157:16 164:15,15 <b>comes</b> 52:17 <b>coming</b> 57:3 119:3 132:11 <b>comment</b> 107:3 150:11 <b>comments</b> 17:5 37:25 <b>commercial</b> 50:7 50:13,18 51:10 111:21 <b>commission</b> 67:20 169:11 <b>commit</b> 67:21 <b>committee</b> 97:8 <b>common</b> 86:25 <b>commonly</b> 88:25 167:25 <b>communicating</b> 60:4	<b>communities</b> 34:7 <b>companies</b> 52:6 140:14,18,23 141:3,12 <b>company</b> 12:7 21:25 29:9,13 30:4,5,19 31:13 31:16,18,20 32:5 32:6 34:7 35:8,9 38:5,5,7,14,15 44:3 59:21 60:19 61:3 65:19,24 66:14 68:6 69:12 84:12 91:22 92:11 101:14 102:13,16 106:23 107:13 108:13 110:7 112:25 114:10 115:3,23 119:4 120:20,21,24,24 120:25 121:8 123:6,12,14,19,22 124:5,7,8,14 125:4,6 128:12 130:18 131:2 132:11,18 133:23 134:4,23 136:15 137:4,7,14,16 138:22 139:2,7,14 141:18 142:20,25 148:25 150:6 154:8,9 155:19,21 156:7 158:8 159:2 159:11,14,20,21 159:21,24 161:11 161:19 163:13,18 166:18 <b>company's</b> 120:7 152:8 158:25 164:22 165:11 166:3,6,12,18 <b>company-specific</b> 120:6 <b>compare</b> 166:2 <b>compensated</b> 24:15 <b>competency</b> 98:11 <b>competent</b> 97:20	<b>complaint</b> 79:9,13 79:16,25 80:20 <b>complemented</b> 118:24 <b>complete</b> 125:14,19 170:7 <b>completely</b> 62:21 <b>completion</b> 147:24 <b>compliance</b> 5:14 6:4 141:24 142:5 173:19 <b>computer</b> 15:20,23 15:25 16:13 17:23 22:23 23:3 <b>concerned</b> 84:22 <b>concerning</b> 80:25 <b>conclude</b> 44:4 62:3 66:20 151:24 <b>conclusion</b> 6:15 31:23 32:2,14,19 32:21,22 33:7,9 33:16 36:10 38:23 41:12,18,20 44:8 65:8 66:20 68:13 71:20 72:11 144:10 150:6,21 151:8,11 160:5 166:10 167:8,15 167:17 <b>conclusions</b> 5:6,15 6:6,10,11,13 15:12 19:24 41:18 70:20 79:18 112:8 166:17 <b>condition</b> 31:14 57:14,17 58:7,17 62:9 65:18 80:25 107:19 <b>conditions</b> 66:3 120:6 <b>conduct</b> 62:12 <b>conducted</b> 51:16 112:18 <b>conducting</b> 96:9 <b>conference</b> 17:11 <b>confidence</b> 26:18 127:19	<b>conflate</b> 31:12 <b>conjunction</b> 54:3 <b>connected</b> 16:4 <b>connection</b> 21:3 23:15 56:4 81:2 97:9 <b>consequence</b> 28:18 33:8 90:14 96:7 121:6 <b>consequences</b> 91:8 99:24 127:6 <b>consider</b> 164:7 <b>consideration</b> 99:23 <b>considered</b> 112:22 123:20 <b>considering</b> 99:7 99:19 100:24 103:16 <b>consistent</b> 28:21 68:21 69:17,20 70:20 112:11 152:2 <b>constant</b> 111:21 <b>constituency</b> 123:19 <b>consulting</b> 12:7,10 12:16,19 103:4 <b>consumer</b> 55:20 <b>contact</b> 18:17 62:15 <b>contains</b> 48:13 80:6 <b>contest</b> 21:13,15 <b>contestants</b> 21:18 <b>context</b> 29:6 <b>continuance</b> 154:14 <b>continuation</b> 92:20 <b>continue</b> 67:4 96:9 120:4 122:9 134:21 143:22 145:23 159:21 161:11 <b>continued</b> 109:23 160:9 <b>continues</b> 69:22 <b>continuing</b> 66:7 <b>contractor</b> 10:10
---	--	--	--	---

<b>contractors</b> 13:16	<b>corrections</b> 170:8	87:25 88:8,17	64:19 65:2,8,16	<b>customer</b> 57:3
<b>contracts</b> 13:14	<b>correctly</b> 37:17	90:6 92:12 109:16	66:23 67:4,9,17	60:24 63:4,5 66:7
<b>contrary</b> 63:16	41:24 104:13	110:16,18 111:9	70:4 71:11,21	70:7 72:2 76:3
68:24 143:19	106:3	111:18,20,23	72:11 75:11,21	93:17,17 114:6,8
<b>conversation</b>	<b>correspondence</b>	123:2 141:23	78:18,20 80:23	114:11,17 142:11
149:24	146:3,24 147:2	161:7,19 173:19	81:4,16 83:9,13	142:21 143:4,7,10
<b>conversations</b> 7:17	<b>corroborated</b>	<b>creditors</b> 5:2 27:3	84:7,16,17,22	144:7,13,15,19,23
<b>convince</b> 115:23	166:11 167:7	28:25 29:18 30:6	85:5,24 86:6	<b>customers</b> 56:20,24
<b>copies</b> 20:9	<b>cost</b> 149:6	30:11 31:6,13	87:23 88:3 89:10	56:25 62:22 70:8
<b>copy</b> 20:4 42:11	<b>costs</b> 112:17	34:6,14,19,20,21	89:15 91:3,12	75:2,3 78:13
148:21	<b>counsel</b> 2:23 3:19	34:23,25 35:2,2	92:17 93:4,11	81:10,18 86:20
<b>corporation</b> 1:4,8,9	4:25 27:2 36:25	35:11,13,15,20	95:17,18,23 96:14	88:20 108:8
1:11 3:9 13:20,21	146:3	36:7,15 37:5,7,13	97:8 99:9,16	111:15 114:15
13:22,24,25 14:6	<b>Counterclaims</b>	37:17,20 38:9,17	100:18 101:2,6,13	142:15,19,19
14:7,8,11 15:14	79:5	38:19 39:12,14	101:24 102:12	<b>cut</b> 65:25 120:2
33:13 34:4 40:6	<b>County</b> 19:16 20:3	40:24 62:11 65:23	103:4,24 104:5,21	122:17,19 137:4
40:22 50:22 85:6	172:5	68:6 91:10,23	104:24 106:6,23	
85:10 88:4 117:12	<b>couple</b> 9:20 50:14	112:24 123:12,14	107:11,17 109:10	<b>D</b>
128:8 133:13	104:13 110:12	123:20,23 124:4,8	109:13,22 110:13	<b>damages</b> 126:6
157:8 173:8,11,16	118:19 126:19	125:25 136:16	110:15,21 111:9	<b>data</b> 9:20 11:6
<b>corporations</b>	163:2	137:14,22 154:11	112:16,22 113:8	41:19 93:4,4
108:11	<b>course</b> 20:8 45:10	<b>creditworthiness</b>	113:19 115:24	148:20 151:10
<b>corporation's</b>	47:2 53:14 76:10	110:23,24	116:9 118:13,14	155:24 156:4
157:6	83:5 88:21 98:3	<b>CRISP</b> 163:21	118:22 119:12	163:16 164:10,21
<b>correct</b> 5:3 7:20	99:4 121:13 122:5	164:11	120:3,13,18	164:24,25 165:3,6
11:19 12:2,24	126:24,25 136:23	<b>critical</b> 134:11	122:16 124:18	165:15 166:15,17
13:5 14:16 15:13	137:6 138:14	154:4	129:9 132:25	167:2,2,11
15:22 18:24 22:15	140:8 159:22	<b>criticisms</b> 134:16	133:7 134:12,19	<b>database</b> 163:21
25:11 26:17 34:9	<b>courses</b> 98:21,25	<b>CRM</b> 54:12,18	135:2,3 136:10,14	164:11
34:18 38:24 39:17	98:25 99:7,9	111:9	136:21 137:3,12	<b>date</b> 3:5,11 41:10
41:7,8,9 53:7,10	<b>court</b> 1:2 4:4 146:4	<b>cross</b> 113:24 114:2	138:14,17,23,25	42:4 43:23 85:21
55:18 77:6,9	146:15 168:24	114:3,4,20 115:5	139:4,13,23	116:15 117:13
78:14,15 80:22	<b>cover</b> 101:2 107:4	130:3	141:14 142:5	128:9 131:13
81:3 82:3,7 89:17	146:10	<b>CRR</b> 1:22 172:22	143:12,16,20	133:16 141:25
89:21 96:6 99:25	<b>covered</b> 146:9	<b>CSFB</b> 5:2,17,22	144:5,6,22 151:2	148:9 170:15
100:2 103:20	<b>create</b> 40:23	19:22,25 21:2	155:6 160:4,7	<b>dated</b> 3:4 4:23 16:7
104:17 105:17,18	<b>created</b> 15:5 110:4	27:3 28:24 29:17	161:22 162:4	41:24 79:5 117:12
107:15 108:5	<b>creates</b> 147:16	30:10,16,18 31:5	165:16	128:8 133:14
109:20 111:11	<b>creating</b> 68:11	33:5 37:2 41:19	<b>CSFB's</b> 51:18,25	148:8 173:5,8,11
113:15 116:16	<b>creation</b> 163:7	46:6,22 47:25	54:22,24 57:11	173:17,22
121:24 123:17,21	<b>credit</b> 1:7,8,9,10,12	50:3,4,9 51:3,6	62:10,14 66:20	<b>dates</b> 55:24 57:5
130:10 132:16,23	2:24 3:10,25 5:12	52:14,16 53:3,12	68:14 74:8 83:21	115:12,15 165:16
139:15,20 140:10	19:8,8,21 23:14	54:6,10 57:17	96:3 99:12 100:5	<b>DATE(S)</b> 171:2
140:21,22 148:3	24:4 31:7 50:5,12	58:2,7,18 59:3,14	100:11 105:14,19	<b>day</b> 21:8 169:9
152:5,23 155:15	50:17 53:16,25	59:16 60:11,15	106:4 108:2,17	171:23 172:20
157:5 159:6 161:4	54:5,12 59:11	61:13 62:4,16	115:5 135:7 160:6	<b>deadline</b> 132:15
166:4 170:7	65:23 79:10 81:18	63:15 64:7,14,15	<b>currently</b> 26:8	<b>dealing</b> 38:13 47:7

47:11 63:15 65:2 159:19,20 <b>dealings</b> 68:14 <b>deals</b> 39:8 42:18 <b>dealt</b> 104:5 <b>debt</b> 39:2,3,9 104:14 125:7 156:4,18 157:2,6 157:16,19,21,23 158:6 159:12,14 164:18,22 165:11 165:14,23 166:3,6 <b>debtor</b> 93:20 <b>Debtors</b> 1:5 <b>decades</b> 50:14 <b>decided</b> 50:14 89:9 136:5,7,8 <b>deciding</b> 138:11 <b>decision</b> 100:23 101:19 134:23 148:21 <b>decreased</b> 153:16 <b>deep</b> 159:5 <b>deeply</b> 122:23 135:8 <b>default</b> 83:5 102:21 <b>defaults</b> 57:20 98:18 101:3,4 <b>defendant</b> 3:22 24:9,11 <b>defendants</b> 1:14 2:10 19:20 <b>definition</b> 28:9 108:6 156:21,22 <b>degree</b> 10:24 111:17 127:19 <b>Delaware</b> 1:2,9,11 <b>delay</b> 5:24 64:21 71:22 <b>delete</b> 18:4,6 <b>deleting</b> 18:2 <b>deliberate</b> 67:22 <b>deliberately</b> 69:12 <b>delimited</b> 64:5 <b>delivered</b> 118:5 <b>demonstrates</b> 122:22	<b>depending</b> 38:4,12 <b>depends</b> 33:9 107:2 159:23 <b>DePew</b> 1:22 172:7 172:22 <b>DEPONENT</b> 170:3 <b>deposit</b> 50:19 <b>deposition</b> 1:19 3:7 3:16 100:9 101:10 101:17 172:12,13 <b>depositions</b> 4:14 45:11 47:2 87:20 97:3 115:9 162:9 <b>describe</b> 81:14,15 99:13 100:13 104:24 132:9 <b>described</b> 25:10 28:8 77:11 83:15 142:11 <b>describes</b> 120:13 <b>describing</b> 36:7 40:17 89:3 102:4 124:10 <b>description</b> 72:15 72:20 73:21 75:6 77:2 83:11 119:25 173:3 <b>destroying</b> 68:11 131:3 139:3 154:9 154:14,20 155:11 160:9 <b>destructive</b> 145:2 <b>detail</b> 100:14 <b>detailed</b> 72:9,10 <b>determination</b> 141:10 <b>determinative</b> 141:16 <b>determine</b> 139:11 140:13 141:11 148:25 162:19 163:17 164:18 166:5 167:23 <b>determined</b> 164:20 167:4 <b>determining</b> 163:12	<b>develop</b> 57:2 <b>dialogue</b> 135:13 <b>difference</b> 37:19 153:22 <b>different</b> 5:7 6:6 8:14,15 30:8,12 34:23 35:3,13 38:11 39:2 44:20 51:13 59:17 65:10 71:24 75:12 111:8 114:11 118:14 124:24 126:12 127:20 140:8 144:10 150:17 156:12 160:13 <b>differently</b> 67:9 140:8 <b>difficult</b> 119:5 148:23 158:13 162:10 <b>difficulties</b> 140:21 <b>difficulty</b> 162:12 167:19 <b>direct</b> 104:14 <b>direction</b> 69:10 70:17 <b>directly</b> 47:7,16 102:6 109:18 124:4 <b>director</b> 2:23 97:6 97:11 118:19,19 <b>directors</b> 39:23 40:3,9,10,11,21 86:3 96:21 97:2,4 97:15,19 100:18 108:11,16 120:25 124:10,11 133:14 133:19 136:5,12 136:17,19 137:8,9 137:22 138:4,10 138:16,21 139:19 139:22 140:4 173:17 <b>disagreed</b> 23:21 <b>disappeared</b> 82:22 <b>disclose</b> 20:2 <b>discontinue</b> 92:15	<b>discount</b> 157:7,18 157:23 <b>discounting</b> 154:7 <b>discounts</b> 165:18 <b>discovery</b> 45:5 46:7 <b>discuss</b> 10:19 43:6 107:20 112:7 131:18 <b>discussed</b> 121:9,23 128:19 <b>discussing</b> 86:15 <b>discussion</b> 36:20,25 72:11 122:20 131:11 134:2 137:20 173:13 <b>discussions</b> 37:22 37:24 84:15 99:16 <b>distinction</b> 59:23 <b>distinguish</b> 38:25 <b>distressed</b> 129:9 <b>DISTRICT</b> 1:2 <b>Doble</b> 2:20 3:23 <b>doctor</b> 52:25 62:2 69:19 70:18 76:25 93:14 117:15 126:22 146:19 162:24 <b>document</b> 3:2 45:14 47:6 48:4,7 49:11 58:22 76:15 79:4,8 87:17 115:21,22 116:13 116:14 117:10 118:8,11 119:25 120:14 121:12,18 128:6 129:4,5,19 131:10,14 132:6 133:12,20 141:22 142:7,12 148:6 173:4,7,10,13,15 173:18,21 <b>documentation</b> 64:13 <b>documents</b> 11:2,4 20:2 23:23 44:12 44:15,16,19,23,25 45:5,10,16,19,24	46:5,5,7,10 47:11 47:13,15,25 48:14 49:6,17 58:5 64:24 76:15,18 79:21 88:22 108:7 115:12,14,18 166:7 <b>doing</b> 42:22 43:25 84:3 90:25 91:8 101:4,24,24 121:13,14,16 123:10 135:19 139:4 143:6 155:2 163:6 <b>dollar</b> 80:15 153:3 153:7 <b>dollars</b> 126:19 <b>Donald</b> 1:22 172:7 172:22 <b>Douglas</b> 2:25 3:14 <b>downsize</b> 68:9 <b>downsizing</b> 98:23 <b>Dr</b> 8:22 9:14 11:18 13:21,22 14:10 17:3,9,20 25:2,3 41:6,23 42:3,16 42:21 43:10,15,20 44:4 47:19 73:18 73:25 95:12 145:25 146:8,13 147:23 150:6,18 150:21 151:19 163:3,6 166:12,20 167:8,10,13,20 168:7 <b>draft</b> 16:18 42:5 <b>drafting</b> 16:9,13 <b>drafts</b> 16:16,21 17:3,19 18:10,15 42:3 <b>drugs</b> 70:12 <b>dramatic</b> 125:10 136:25 <b>drastic</b> 130:14 <b>draws</b> 79:18 <b>drive</b> 16:12 68:9 <b>due</b> 42:11 132:11
--	---	--	--	---



duly 4:7 172:12	EC2Y 2:19	156:25 157:2,13	113:4,4,8,13,13	exists 112:16,22
duties 40:22,23	edited 36:24	157:14,15,19	evil 114:23	113:5,8,14
97:25 138:5,6	editing 17:9	enterprises 14:12	evolution 37:23	expect 108:22
161:18	edits 17:5	14:13 93:22	exact 107:6	111:14,17 146:3
duty 27:23,23 28:3	effect 30:4 79:9	enterprise's 154:23	exactly 37:23 90:17	expectations 154:4
29:13,20 31:6,19	86:23 122:7 123:9	157:2	110:9 113:20	expected 103:18
32:10,11 33:13	135:24 154:21	entirely 82:13	115:4	expense 28:5
34:3,4 36:6 37:19	161:12 162:10	entities 14:14,18	EXAMINATION	experience 45:15
91:3 122:16 124:7	effectively 151:2	19:9 110:5	4:10 95:10 163:4	56:18 108:10
124:8,9,17 136:10	effort 41:11,15	entitled 3:3 117:11	examine 146:7	109:14 111:6,13
136:17 137:16,21	80:21 141:11	128:7 131:11	167:16	129:9
160:5	eight 78:20	133:13 141:23	examined 4:8 95:6	experienced 4:14
	Eight-page 148:6	148:7 173:4,7,10	170:5	experiences 22:20
<b>E</b>	173:21	173:13,15,18,21	examining 166:15	experiencing
E 2:2,2 95:2,2	either 28:9 71:13	entity 12:4,18	167:10,12	140:20
172:2,2	73:18 128:11	32:10 33:19 34:12	example 46:12	expert 4:13,22 12:3
earlier 100:20	144:3 147:16	34:21,22 35:4	47:14,25 51:5,9	12:12 18:22 19:20
134:19 167:13	emphasis 39:24	75:8 88:6 89:23	57:18 61:6 65:10	20:8 22:13 23:13
early 16:11 52:10	employees 10:6	entries 22:23	66:4 82:17 83:25	42:18 138:18
110:13	34:6 35:22 39:5	entry 23:9	99:21 103:17	expertise 118:13,24
earn 71:2,9	66:13	equal 157:14	104:8	119:5 129:8
economic 27:10	enabled 91:9,20	equity 32:11 33:14	examples 103:4	138:19 139:18
28:2,18,21 29:14	131:2	34:5 46:21 98:16	107:10	experts 79:23 80:3
34:2 36:16 37:25	encompass 33:13	108:2,12,17 125:7	excess 98:18	Expires 169:11
38:8,14 67:3	encompasses 34:4	157:16,17,22	exchange 130:7	explain 4:15 28:10
68:19 69:5 91:8	encouraged 120:3	158:2,15,25	exclusive 137:2	63:24 64:2 151:14
91:22 123:11	ended 69:24,25	159:13 164:16	excuse 86:14	explained 33:3,15
124:6 136:22	154:15,20	165:22	execution 106:25	explaining 38:11
138:3 141:9	engage 120:4	Errata 170:9	exercise 138:21,23	exposure 111:10
144:17 145:2	122:20 129:22	error 49:15	exercised 139:5	express 23:13,24
158:14	132:25	errors 67:19,20	Exhibit 3:2 4:24	24:3 71:21
economically 31:17	engaged 19:7 66:24	68:2	11:18 15:5 20:23	expressed 5:17
31:18 122:21	69:16 139:2	ESQ 2:8,14,15,20	41:11,25 47:20,22	105:13
135:8 139:2	engagement 21:16	estimate 25:17,22	48:13,19,23 49:4	expression 156:11
148:25 155:21,23	59:5 62:6 105:16	145:8 154:23	49:12,16 54:21	extended 37:13
156:11,16,19	118:15	156:3	57:11 62:3 85:17	extending 161:19
157:2,8,20 159:15	engaging 44:8	estimated 25:23	117:10,16 128:6	extensive 135:4
167:6	112:24 131:3	et 1:4 3:9,10 113:9	128:19 131:10,16	extensively 60:20
economics 10:23	engineering 129:12	113:10 119:2,2	132:6 133:12	73:3
158:13	129:22	evaluate 111:9	141:22 142:3	extent 38:2 77:24
economist 19:20	enhance 51:23	event 31:13 37:15	147:25 148:5,6	78:2 80:6 82:14
27:11 32:3,9	enjoyed 83:14	events 115:8	EXHIBITS 173:2	88:7 99:5,17,22
33:16 149:3	enriching 28:4	eventual 152:15	exist 6:16	102:19 124:13
economists 32:4,15	entered 75:4	eventually 119:13	existence 5:20 33:9	138:25 145:3
33:18 79:24 80:4	enterprise 29:7	119:14	68:15 82:21	161:23
109:2 145:7	66:25 153:16	evidence 65:5	136:22	external 73:4,15
151:23	154:18,22 156:17	104:2 112:16,22	existing 112:23	e-mail 17:19

<b>e-mails</b> 17:22 18:3 18:4,7	<b>fails</b> 130:3	136:14 137:7,10	143:20 145:6	<b>followed</b> 123:7
<b>F</b>	<b>failure</b> 130:21	137:13,16,21	149:3 151:22,25	126:25 135:25
<b>F</b> 95:2 172:2	138:20	138:22,23 139:7	152:3 162:6	138:14 140:9
<b>face</b> 152:9 156:18	<b>fair</b> 10:25 23:11	159:24,25 160:4,8	<b>financing</b> 59:21	<b>following</b> 126:17
156:25 157:7	36:19 39:21 42:16	161:21,22,24,25	75:2 86:19 100:19	167:20 171:3,4
159:14 165:10	76:25 129:14	<b>figure</b> 165:10,21	120:4 125:5	<b>follows</b> 4:9 95:7
166:2,5	134:17	166:2	162:21	<b>footnote</b> 72:17,18
<b>faced</b> 140:14	<b>fairly</b> 101:3 147:8	<b>figuring</b> 6:19	<b>find</b> 24:19 30:17	78:24
<b>facilitate</b> 144:25	<b>faith</b> 150:22	<b>file</b> 5:24 59:4 62:5	73:16,17,21 84:2	<b>force</b> 134:23
160:9	<b>familiar</b> 28:17	62:17,18 64:21	111:14 116:19	<b>forced</b> 93:12 96:16
<b>facilitation</b> 123:10	<b>far</b> 25:7 85:3 93:6	65:3 71:23 120:3	<b>findings</b> 166:8	<b>forecast</b> 166:24
<b>facilities</b> 90:22	132:17 139:11,15	124:19	<b>FindLaw</b> 73:13	<b>foreclosure</b> 82:18
122:9,18 124:22	155:4 165:8 167:5	<b>files</b> 134:7	<b>findlaw.com</b> 72:19	109:15
130:7 134:22	<b>February</b> 89:9 90:5	<b>filing</b> 99:24 105:9	<b>finds</b> 92:13	<b>foregoing</b> 170:6
162:6	91:5,13 92:8,19	113:9 120:19	<b>fine</b> 129:15 147:19	<b>forget</b> 168:22
<b>facility</b> 55:9 56:5	92:22 93:6,10	134:14,20 135:2	<b>finger</b> 81:15 107:25	<b>form</b> 5:9 16:25
86:12,13,23 87:14	104:4	<b>final</b> 16:25 165:25	<b>firm</b> 3:24 7:3 9:2	30:14 31:15 34:8
87:24 89:10,20	<b>fee</b> 57:4 74:18	<b>finally</b> 104:23	16:21 18:14,23	34:15 35:14 37:4
91:5,16 92:20	<b>feedback</b> 101:13,25	<b>finance</b> 10:8,12	26:19 43:12	37:21 38:22 39:15
93:10 104:10	102:12	68:23 75:4,5	<b>firm's</b> 118:23	51:14 56:24 64:5
106:12 110:20,25	<b>fees</b> 56:23 71:16,17	129:9	<b>first</b> 1:7,8,10,10,12	66:22 68:17 71:18
122:4 123:4,5	114:19	<b>financial</b> 5:23 6:16	3:10 18:21,25	85:2 88:15 98:4
131:2 143:24	<b>Felt</b> 84:8 100:13,15	27:11 32:4,9,15	19:8 22:16,24	127:3 128:14
162:15	103:2,18,22 105:8	33:16,18 55:9	23:14 24:14 43:22	134:24 140:16
<b>facing</b> 61:3	113:17,19 115:3	56:11,20,25 57:13	47:17 49:14 50:2	142:17 157:16
<b>fact</b> 14:23 63:19	115:14 116:4	57:17 58:6,15,17	50:5,16,17 52:19	<b>formally</b> 100:7
68:18 71:5,20	118:19 119:3	59:5,15,24 60:18	56:12 57:22 59:7	<b>formed</b> 99:5
80:9 83:25 84:20	128:17 143:2	60:22,23 61:2	75:17 132:3,25	<b>forth</b> 17:19 60:8
98:14 103:13	151:4	62:6,9 64:20 65:8	135:5 141:23	81:18 95:18 101:5
104:3 107:24	<b>Felt's</b> 103:7 107:10	65:10,14,17,18	144:18 148:13	116:10 125:8
108:21,25 118:2,3	115:11,24 121:9	66:13,21 67:8,13	149:17 150:20	163:9 168:22
122:13,22 132:10	127:21 129:7	67:18 68:16,24	153:18 157:21	172:12
132:24 134:6	133:2,22	69:9,13,18,20	163:12 173:19	<b>found</b> 47:8,14
135:25 141:8	<b>Fiachra</b> 52:20,21	70:19 71:4,21,24	<b>five</b> 10:15 117:3	73:19 74:3 165:21
155:10 160:8	52:21 53:4	71:25 74:17 79:23	<b>flip</b> 130:8	<b>four</b> 22:7
<b>factor</b> 67:14	<b>fiduciary</b> 5:2,12,21	80:4,25 83:20,24	<b>Floor</b> 2:6	<b>fourth</b> 104:23
<b>facts</b> 41:21 79:18	6:2,9,12,17,21	84:11 91:19 93:16	<b>flow</b> 156:20 166:23	<b>front</b> 146:15
80:7 112:8,9	27:3,7,12,13,17	93:16,25 94:2	<b>flows</b> 75:10,15	<b>FTI</b> 139:25
135:17,18 136:20	28:7,22,24 29:4	99:9,13 100:5,11	<b>fluke</b> 166:25	<b>fulfilling</b> 97:25
141:17 155:9	29:19 30:11 31:6	105:4,14,20,24	<b>flux</b> 124:3	<b>full</b> 44:8 48:13 57:8
<b>factual</b> 79:13	31:19 32:5,10	107:19 109:2	<b>focus</b> 26:25 74:20	146:14
139:12	33:10,12,19,20	112:21 114:13,21	106:4	<b>fully</b> 98:9
<b>fail</b> 60:25	34:3,13 36:6,14	119:7 120:8	<b>focusing</b> 59:7	<b>function</b> 79:8
<b>failed</b> 129:24 137:9	37:3 38:2,17	121:10,14,22	<b>folks</b> 108:18 114:17	111:25
144:23	39:20,23 40:18,22	129:11,22 138:18	118:20	<b>further</b> 34:11
	40:23 62:10 72:5	138:19 139:18	<b>follow</b> 137:5 139:9	166:15,16 168:10
	91:24 124:14,17	140:3,24 143:17	143:14 163:8	168:12 172:15



**F-i-a-c-h-r-a** 53:6  
**F-i-c-h-r-e** 53:5

### G

**garage** 20:20  
**gathered** 135:18  
**geared** 63:7 67:2  
 68:10  
**general** 8:8 33:17  
 33:24 39:3 51:2  
 51:19,24 59:13  
 66:5 72:15 73:21  
 78:8 83:11,17  
 91:14 144:14  
**generally** 10:15  
 18:19 19:23 20:11  
 27:11,22 29:24  
 32:4,15 75:2 77:4  
 100:10 163:24  
 164:3 165:4,7  
**generated** 75:10  
**generating** 74:18  
**generic** 39:9 89:18  
**getting** 66:9 68:5  
 71:16,17 105:9  
 139:22 150:2  
**give** 4:19 5:10 28:9  
 45:4 51:2 60:17  
 60:25 72:14  
 144:19,23 156:3  
**given** 30:3 38:15  
 39:16 41:21 44:17  
 45:19 46:9,11  
 58:14 62:8 77:3  
 84:17 91:18 92:22  
 93:11 117:15,22  
 127:17 131:15  
 133:17 138:17  
 144:17,24 170:8  
 172:14  
**gives** 40:10 61:11  
**giving** 63:6 99:23  
 106:23 107:12,12  
 124:16  
**Glatt** 2:5 4:3  
**go** 14:2 26:24 47:16  
 61:9 83:25 95:12

109:11 125:9  
 149:9,9 154:15  
 158:5,19,22  
 168:15  
**goes** 10:25 138:4  
 150:14 158:16,20  
**going** 9:8 11:2 23:7  
 44:14 59:22 61:6  
 61:19 64:9 65:24  
 82:5,10 91:21  
 94:10 99:12 115:4  
 117:5 127:10  
 145:8,18 146:12  
 149:6 155:14  
 168:18  
**good** 22:5 26:23  
 30:24 52:10 60:23  
 79:15 94:7,9  
 143:8,13,14  
 144:14 147:20  
 149:16 169:3  
**gotten** 80:11 90:19  
 90:20 162:13  
**grail** 114:21  
**greater** 83:6 111:17  
 157:17,22  
**group** 7:23 8:2,5  
 12:7,10,17,19  
 22:10 23:12 53:17  
 54:8,18 111:8  
 118:18 119:12  
 121:10 133:2,23  
**group's** 129:7  
**guarantee** 47:12  
**guarantees** 77:25  
 78:3,5,7 131:24  
**guess** 5:11 26:20  
 45:13 46:15 50:14  
 53:11 98:10  
 110:19 118:12  
 136:3 142:20  
 151:6,7,9,24  
**guideline** 143:14  
**guidelines** 5:14 6:4  
 62:12,14,16,20  
 72:4

### H

**H** 4:6 95:4  
**habit** 18:2  
**half** 22:4  
**hand** 172:20  
**handed** 142:2  
**handles** 13:10  
**handling** 124:21  
**Hang** 8:23  
**Hanouna** 10:3,11  
 11:6,11 13:9  
**happen** 31:14  
 134:3  
**happened** 90:4,18  
 90:23 129:19  
 153:19,20 154:19  
**happens** 132:22  
**happenstance**  
 166:22  
**hard** 16:12  
**harm** 91:21 130:11  
 130:20 131:5  
**harmful** 112:23  
**headed** 72:13  
 107:17 118:13  
**headings** 129:2  
**hear** 27:11 125:15  
**heard** 156:20  
**heavily** 50:15 154:6  
 154:7  
**held** 1:19  
**help** 11:7 15:2  
 66:24,24 75:11,21  
 121:17,19,20  
 122:2 133:23  
**helped** 8:21 52:8  
 55:21 144:25  
**helping** 11:3 52:6  
**helps** 57:3 82:20  
**hereinbefore**  
 172:12  
**hereunto** 172:19  
**hesitated** 16:4  
**High** 118:25  
**higher** 71:8 83:5  
**hindsight** 98:13

**hire** 115:23  
**hired** 129:21  
**historical** 109:14  
**history** 81:7,9,18  
**hold** 21:10 26:4  
 80:11,12 169:2  
**holders** 33:14 34:5  
 38:3,20 39:2,3,5  
**holy** 114:20  
**home** 15:16,18,21  
 17:12 21:21 22:8  
 23:2 50:22 76:2  
 81:10 82:22,23  
 109:16  
**homes** 1:4 3:8  
 23:15 82:18  
 117:11 128:7  
 131:11 133:13  
 160:24 173:8,11  
 173:13,16  
**hope** 26:20 56:24  
 136:7  
**hoping** 136:2  
**hour** 25:5 69:22  
 70:9  
**hourly** 24:24,25  
**hours** 25:21,25  
 70:12,15,25  
**house** 44:24 147:10  
**housing** 65:13  
 74:25 77:18 86:21  
 110:21 140:19  
 141:4  
**Huebner** 2:25 3:14  
**huff** 147:9  
**hundred** 126:19  
**H-a-n-o-u-n-a** 10:3

### I

**ID** 173:3  
**idea** 23:20 43:3  
 54:17 88:7 144:14  
 151:6,7,7  
**ideas** 84:7 101:7,8  
 119:8,22 121:8,22  
 129:10 130:18  
**identical** 165:18

**identification** 3:4  
 117:13,16 128:9  
 131:12 133:15  
 141:24 148:5,9  
**identified** 6:7  
**identifies** 118:17  
**identify** 10:5 11:3  
 83:20  
**III** 79:20  
**Ilkhani** 9:23 10:11  
 11:11 13:8  
**imagine** 42:14  
 147:6  
**immediate** 120:19  
**immediately** 52:17  
 68:14 95:24  
**impact** 21:2 100:24  
 101:20,21 102:16  
 102:20,22 112:23  
**implicitly** 122:2  
 135:24  
**import** 102:10  
**importance** 148:20  
**important** 33:2  
**impossible** 145:3,5  
**improve** 120:6  
**imprudent** 92:24  
 93:25  
**inappropriate**  
 143:22  
**incentive** 65:10,11  
 65:14,21 66:10  
 69:5,14  
**incentives** 5:23  
 6:16 38:12,15  
 64:20 65:8 66:13  
 66:21 67:3,8,13  
 67:18 68:16,19,24  
 69:3,9,18,21  
 70:16,19 71:4,22  
 71:25 151:25  
 152:4  
**include** 23:7 48:3  
 81:7  
**included** 26:12  
**includes** 49:16,17  
**including** 41:19

49:9 81:17 101:3 109:13 <b>income</b> 71:9 <b>inconsistent</b> 5:13 6:3 <b>incorrect</b> 84:24 <b>increase</b> 154:19,22 <b>increased</b> 153:16 <b>independent</b> 6:16 10:10 13:15 24:12 41:11 80:8 110:17 139:5 <b>independently</b> 80:18 <b>INDEX</b> 174:2 <b>indicate</b> 22:23 41:5 64:19 155:24 <b>indicated</b> 121:12 146:2,5 <b>indicates</b> 30:17 63:14 64:13,25 85:12 <b>indicating</b> 164:21 <b>indication</b> 61:11 100:17 103:23 122:14 143:16 <b>individual</b> 53:2 63:14 64:13,15 67:16 78:13 <b>individuals</b> 71:11 84:16,16 <b>industrial</b> 36:4 <b>industry</b> 51:18 77:4 98:17 140:19 141:4 <b>industry-wide</b> 120:5 <b>inference</b> 37:13 <b>influence</b> 110:24 <b>inform</b> 51:17 101:2 101:23 <b>informal</b> 105:24 <b>information</b> 57:12 57:16,22,23 58:6 58:12,16,20,23 60:25 62:25 63:16 72:14,18,24 79:3	80:24 81:4,5,16 81:21,21,24 83:10 83:15,20,24 84:4 84:10,17,19,21,23 85:25 107:18,20 109:4,9,11,13,17 120:17 136:20 139:12 150:25 164:5 <b>inherent</b> 58:10 <b>initial</b> 52:6 <b>inside</b> 57:13 107:18 109:10,13 <b>insofar</b> 33:22 40:14 <b>insolvency</b> 32:10 39:16 41:13 92:4 92:23 93:11 96:18 136:22 166:13,18 167:15 <b>insolvent</b> 30:4 31:17,19 34:12 35:9 38:7,13,16 41:3 44:3 66:25 67:2 68:4 85:19 92:5 93:18,21 94:3 120:8 122:21 122:23 124:7 135:8 139:2 149:2 150:7 155:17,19 155:21,23 156:2,8 156:11,13,16,19 156:20 157:3,8 159:2,15 167:6 <b>instance</b> 50:21 91:18 123:24 <b>institution</b> 50:19 51:13 72:2 93:16 93:25 162:6 <b>institutions</b> 114:14 114:21 <b>instruction</b> 40:7 <b>instructions</b> 40:9 40:10 <b>instruments</b> 35:25 <b>insulate</b> 109:23 <b>intend</b> 146:20 <b>intended</b> 88:10	<b>interchangeably</b> 29:9 <b>interest</b> 31:12 34:14 66:7 71:16 77:11 78:11 82:9 82:16,25 83:4,6 152:15 153:21 160:2 <b>interested</b> 56:16 82:5 126:11 128:13 130:19 151:21 172:17 <b>interests</b> 28:2 29:14 33:14 34:5 63:4 82:15 91:22 123:11 <b>Internet</b> 16:5 <b>interpret</b> 107:3 <b>interrupt</b> 85:14 <b>interruption</b> 63:22 <b>intervening</b> 86:22 <b>interview</b> 21:12 <b>interviewed</b> 43:22 <b>introduce</b> 3:19 114:17 <b>introduces</b> 115:3 <b>inventory</b> 87:5 <b>investment</b> 20:3 50:8,15,20 51:10 52:3,11 56:19 58:11 72:13,16,21 72:25 73:6,9,22 77:16,23 83:12,14 111:22 113:21 140:14 142:20 <b>Investopedia</b> 72:19 73:13 <b>investor</b> 88:11 <b>invoice</b> 26:9 <b>involve</b> 163:11 <b>involved</b> 19:10 24:2 110:5 118:15 <b>in-person</b> 7:18 <b>irrelevant</b> 162:3 <b>isolate</b> 110:5 <b>issue</b> 26:6 33:4 75:9 91:7 93:3 160:13	<b>issued</b> 78:9 <b>issues</b> 42:18 104:13 <b>I-I-k-h-a-n-i</b> 9:24 <hr/> <b>J</b> <hr/> <b>J</b> 2:15 <b>Jacob</b> 118:18 <b>James</b> 53:15 <b>Jared</b> 118:19 <b>job</b> 137:25 138:3 139:8 150:19 151:19 <b>Jointly</b> 1:5 <b>judge</b> 148:23 <b>judge's</b> 148:21 <b>judgment</b> 136:10 136:11 138:4,15 138:15 139:5 150:16 <b>June</b> 106:6,20 115:4 116:7,9,20 117:18 121:7 122:8,16 124:19 126:13,17,25 127:21 128:10 155:18 156:7 167:5 <b>Justin</b> 2:15 3:23 <b>J.P</b> 165:2 <hr/> <b>K</b> <hr/> <b>keep</b> 5:23 16:16 20:9 23:2 57:3 59:21 64:20 65:9 65:14,21 66:14,25 71:16,22 102:18 121:13,16 131:3 139:4 <b>keeping</b> 87:5 <b>kept</b> 23:5 90:25 <b>keyboard</b> 15:6 47:21 <b>kind</b> 12:18 60:15 76:4 105:24 110:2 112:4 114:16 115:25 121:12 132:13 142:15	150:17 161:6 <b>kinds</b> 34:23 35:13 35:24 71:13 81:16 114:18 119:5 134:3 <b>King</b> 9:2 <b>knew</b> 120:24 121:2 137:4 155:13 <b>know</b> 8:18 9:5 10:18 11:2,13 12:17 21:7,13,17 21:17,20,23 23:6 23:6,8 25:12,14 25:20 28:15,18 37:14 42:5 43:2 43:19 45:18 47:5 47:24 50:9 51:5 52:22 53:12 54:6 54:10 56:12 57:20 60:24 61:5,10 63:4,9 64:8 66:2 70:4 74:2 78:3,4 80:17 83:2 85:3 87:16 90:17 91:23 92:3 96:22 97:5 97:13,13,22 98:20 98:24 99:21 100:22 103:13 104:18,22 108:22 113:22 116:6,11 116:12 117:21 118:2,3,6 119:10 120:12,21,23 121:6 123:25 125:23 126:9,10 126:21 127:5 129:16,18 131:22 132:17 134:6 135:13,15,16 136:2,2 137:5,8 137:15 138:10 139:15,17,21,24 140:6,23,25 141:2 141:8 142:10,21 143:3,7,10 144:13 144:15,18,23 147:5 151:2,12
--	---	---	--	--

152:20 153:19 154:13,16 155:4 155:22,23 158:12 161:10 162:4,8,17 162:17 165:8 166:22 knowing 45:9,17 71:10 80:9 84:14 137:3 knowledge 60:24 65:17,18 77:4 129:21 154:25 known 52:4 57:24 98:15,15 107:21 108:17 112:10 155:9 Kozlowski 2:23 3:24 ----- <b>L</b> L 4:6 95:4 labeled 46:6 laid 119:21 large 38:10 law 1:20 7:3 10:23 10:24 43:12 124:2 124:2 137:19 lawsuit 80:2 lawyer 8:20 10:25 27:9 158:12 lawyers 8:25 9:10 16:20 44:6 lead 136:21 166:9 leading 112:18 learn 41:17 learned 43:20 Leave 98:24 leaving 102:25 103:22 107:10 led 132:5 legal 3:14 5:10 27:21 31:23 32:2 32:14,19,21,22 33:8,16 36:10,11 38:23 39:7 79:4 79:15 91:6 124:16 143:4 160:12	leisure 70:14,15 71:7,8 lender 55:8 56:3 88:4,6,11 89:11 89:16,22 90:10 91:15 95:17,18,23 lenders 93:20 lending 111:22 143:23 lends 86:20 lent 89:22 letter 147:3,9,12 let's 28:25 39:6 49:24 54:23 63:2 72:8 74:20 82:17 106:15 113:16 123:13 125:9 128:3 145:15 148:4 168:15 liabilities 39:4,5 liability 1:9 158:21 158:22 lie 138:5 life-threatening 92:14 liked 23:22 likelihood 112:19 152:15 limited 1:9 158:21 limits 72:5 line 54:4 62:9 87:25 88:17 171:5 Linklaters 1:20 2:11,17 3:17,22 liquidation 1:6 3:9 26:21 123:7 list 19:5 44:18 45:22,23,24 46:8 46:9 48:13 49:4 literature 38:11,25 39:8,19,22 40:4 40:17,20 73:7 137:19 litigation 24:2 69:22,24 79:9 125:13,18 little 119:17 128:16	LLC 1:9 2:24 12:20 12:21 13:12,20 LLP 1:20 2:11,17 loads 45:16 loan 74:8 76:8,9 86:12,13 90:21 100:24,25 101:22 101:22 102:4,5,17 102:20 111:20 loans 77:18 88:20 93:21 London 2:19 long 20:20 66:8 157:16 look 20:22 23:23 25:16 39:10,12 40:4 68:9 72:8 88:16 118:10 119:4 127:14,16 128:3 135:6,10 150:22 151:17 160:22 looked 41:19 76:20 76:24 88:11,22 93:3,4 150:25 151:10 167:2 looking 27:25 32:21,22 36:23 59:14,21 77:15,22 78:12 90:9 98:20 100:18 148:20 looks 131:14 142:7 142:8 loose 75:6 loosely 48:6 Los 2:7 lose 82:23 losing 63:8 106:14 106:19 126:16 loss 109:14 losses 120:2 lost 126:18,20 lot 44:14 52:5 73:7 91:15 lots 34:23 Lotus 132:5 lousy 150:2,3	loyalty 27:24 28:3 lunch 94:8 95:15 Luncheon 94:12 ----- <b>M</b> main 39:22 maintain 16:16 18:15 59:19 91:9 91:20 98:22 102:19 135:23 maintaining 63:8 maintains 18:11 159:8 major 50:13 52:2,2 56:18 96:11 114:13 161:9 making 65:12 67:2 93:21 111:20 116:5 124:15 138:4 161:21 167:14 management 53:17 54:13 84:6 86:2 98:6,20,25 99:2,6 99:9,18,22 100:17 104:4 107:22 108:10,16 109:3 110:17 111:19 112:10 120:25 124:11,12 136:4 136:12,18,19 137:5,8,9 138:21 139:4 140:5 managers 39:25 40:2,5,6,12,21 managing 118:18 143:13 manner 5:19 6:20 33:5 63:3 72:12 160:11 manual 5:14 6:4 141:24 142:5,24 173:19 manufactured 65:13 74:25 76:2 77:18 86:21 110:21 140:19	141:4 manufacturing 160:24 March 16:10,11 106:7,21 131:12 155:25 156:6 173:14 marginal 157:7 mark 128:5 131:8 133:11 148:4 marked 4:23 117:12,16 118:11 128:8 131:12,16 133:15,17 141:24 142:3 148:8 market 52:9 118:25 148:20,24 151:10 151:21 152:13 154:4,6,13 155:9 155:12 156:17,24 156:24 157:12,13 157:14,17,18 159:11,12,13 163:12,17 164:15 164:18,21 165:13 165:21,22 167:11 marketing 75:22 market's 154:23 marks 61:23 marriage 172:17 material 80:3 101:20,20 118:5 161:5,18 materials 20:21 58:13 59:9 61:11 63:12 64:11 65:12 79:22 99:3 100:16 127:17 131:11 143:15 161:2,6 173:14 math 26:4 matter 8:22 11:9 12:23 15:4 17:8 18:21 19:7,14 20:8 21:3,6 24:21 25:7,21 42:20 43:6 44:22 51:19
---	--	---	---	--



57:9 59:13 66:5 69:20 75:25 146:25 148:14 158:25 172:18 <b>matters</b> 11:21 19:5 19:12 61:13 71:12 102:5 107:5 136:11 138:15 <b>maturing</b> 165:13 <b>mean</b> 13:24 27:10 27:16,20 29:5,23 45:14 54:25 60:5 62:10 80:10 82:14 87:11 95:18 98:15 114:3 115:21 120:25 121:19 151:20 156:11,13 156:15,17,19 <b>meaning</b> 39:13 <b>means</b> 29:25 48:6 96:2 136:16 144:16 152:12 158:2 160:10 <b>meant</b> 27:6 28:10 133:4 <b>measure</b> 145:4,6 <b>measures</b> 122:24 <b>mechanical</b> 15:4 17:8 44:22 <b>mechanically</b> 47:21 <b>meet</b> 42:9 <b>meeting</b> 7:23 8:14 22:16,24 23:7,9 23:12 24:14 42:6 43:22 118:4 129:17 <b>meetings</b> 7:17,18 7:25 8:2,5,15 9:3 97:11 <b>members</b> 111:18 139:19 164:4 165:4 <b>memoranda</b> 112:7 <b>memorize</b> 128:24 <b>memory</b> 41:23 150:2,3,14 <b>mention</b> 8:12 14:18	14:21,23 <b>mentioned</b> 44:5 130:24 135:20 151:3 <b>mergers</b> 52:5 <b>Merrill</b> 3:14 <b>met</b> 41:16 <b>method</b> 166:10 <b>methodology</b> 163:9 163:11 <b>mid-1980</b> 78:5 <b>mid-2001</b> 78:6 <b>mid-2002</b> 56:2 <b>million</b> 110:20 126:19 <b>mind</b> 37:7 50:10 52:18,22 64:7 <b>minuses</b> 135:11 <b>minute</b> 58:2 <b>minutes</b> 97:10,12 117:3 <b>misstates</b> 53:8 <b>mistakes</b> 69:4 <b>mobile</b> 81:9 82:18 82:22,23 160:24 <b>modest</b> 98:22 <b>moment</b> 74:21 <b>money</b> 56:22 61:6 63:8 71:2,13 76:3 86:20 106:14,19 126:17 149:7 153:20 <b>monitor</b> 109:23 <b>month</b> 128:16 <b>monthly</b> 77:17 <b>months</b> 149:13,14 149:16,23 <b>Morgan</b> 165:2 <b>mortgage</b> 76:4,6 <b>mortgages</b> 57:20 57:21 75:3,7,10 75:12,22 88:19 <b>mortgage-backed</b> 52:9 75:13,16 <b>motivating</b> 67:14 <b>movement</b> 39:20 <b>moves</b> 137:21	<b>Muir</b> 100:22 101:11 102:3,11 102:24 103:16 144:3 <b>Muir's</b> 101:10,17 107:3,8 <b>Multipage</b> 3:2 117:10 128:6 131:10 133:12 141:22 173:4,7,10 173:13,15,18 <b>multiple</b> 55:3,5 <b>multiplied</b> 163:13 <b>multiply</b> 164:13 165:10 <b>mutually</b> 137:2 <b>M&amp;A</b> 103:17  <hr/> <b>N</b> <b>N 2:2</b> 4:6 95:2,2,2,4 <b>name</b> 8:18 9:14,16 14:8,10 21:10 23:8 50:17 52:19 52:22 53:2,4,15 53:18 84:8 97:3 111:8 <b>names</b> 8:12 <b>nature</b> 58:10 66:2 110:2 <b>near</b> 101:11 112:15 <b>nearly</b> 125:13,19 <b>necessarily</b> 48:9 62:18 102:14 103:18 122:19 125:2 137:3 141:15 153:18 <b>necessary</b> 33:6 164:12 <b>need</b> 4:15 123:4 124:19,20 135:21 161:2 <b>needed</b> 24:3 96:10 150:18 <b>needless</b> 80:13 <b>negative</b> 23:13 24:3 24:10 111:3 <b>neither</b> 121:8	147:15 <b>networked</b> 15:23 <b>never</b> 16:24 37:8 43:9,11,23 49:13 63:3 145:8 158:16 158:20 <b>new</b> 1:21,21,24 2:13,13 3:15,15 3:18,18 86:6,9 172:3,5,10 <b>newspaper</b> 98:16 <b>non-public</b> 57:16 58:6,12,15,16 <b>Notary</b> 1:23 4:8 95:6 169:11 172:9 <b>noted</b> 95:3 169:5 <b>notes</b> 22:22 36:2 81:12 89:11 108:2 132:11,13 <b>notion</b> 28:22 33:4 143:7 <b>November</b> 79:6 134:6 <b>number</b> 23:20 30:19 37:22 80:14 80:15 81:15 140:18 163:13 164:13,13 <b>numbered</b> 142:13 <b>numbers</b> 46:6,15 46:16,24 47:3 80:18,20 165:20 <b>numeral</b> 6:8 26:25 36:23 79:20  <hr/> <b>O</b> <b>O 4:6</b> 95:2,2,2,4 <b>Oakwood</b> 1:4 3:8 5:2,20,23,24 23:15 26:21 27:3 28:25 29:5,6,7,8 29:17,18 31:6,8 34:22 35:2,12 37:16 39:11 41:3 41:13 47:7,11 49:5 50:22 52:14 53:3,20 54:3,23	54:25 55:4,21 56:4 57:12 59:3 59:10,14 60:12,15 61:12 62:4,11 63:15,15 64:14,20 64:21 65:2,3,9,11 65:14 66:13 67:10 67:18 68:4,15 70:7 71:12,22,23 74:10,24 75:5 77:19,22,24 78:3 78:4,12,21 82:10 82:16,20,22 83:21 84:2,6,16 85:6,9 85:18,25 86:19,21 88:4,8 89:11,16 89:22 90:17,18 91:9,19 92:5,11 93:13 95:16,17 96:8,17,21,22 97:11,19,24 99:18 99:23 100:17,23 101:12,18 102:11 103:4,23 104:14 104:24 105:7 106:6 108:17,18 109:10,12,22,24 110:4,23 111:3 112:11,12,20 115:5,15,23 116:10 117:11,17 117:21 118:23 119:4,11,20 120:2 120:3 122:5,16,20 122:23 124:18,23 125:13,18 126:11 128:7 129:21 131:11 133:3,5,13 134:7,20 135:7,10 135:13,25 136:4 136:12,16 137:16 139:12 140:4,21 142:25 143:12,18 144:10,11 153:2 155:2,17 160:19 167:5 173:7,10,13 173:16
---	---	--	--	--

<b>Oakwood's</b> 30:10 37:2,20 39:14 55:20 57:13,17 58:6,16 59:12 62:9 78:18 80:25 82:11 83:4,6 88:20 96:4 98:6 104:4 107:19,22 112:23 125:24 135:4 <b>object</b> 32:18 51:14 63:21 64:4,9,9 <b>Objection</b> 5:9 30:14 31:15,22 34:8,15 35:14 36:9 37:4,21 38:22 39:15 66:22 68:17 70:22 71:18 84:25 88:15 96:24 127:3 128:14 134:24 140:16 142:17 <b>Objections</b> 79:5 <b>obligated</b> 82:11 <b>obligation</b> 5:12,21 6:2,10,13,17,21 6:22 27:12,18 28:22,25 32:5 33:10,19,20,22 34:2,13 35:8,10 36:14 38:3,4,6,8,9 38:17 72:5 91:24 124:3,4,14 136:15 137:7,10,13 138:22,24 139:8,9 159:24,25 160:8 161:21,22,25 162:2 <b>obligations</b> 39:23 76:2 77:12 81:6,8 81:22 104:14 <b>obtain</b> 164:4 <b>obtained</b> 107:18 <b>obtaining</b> 109:9 <b>obviously</b> 149:6 <b>occasion</b> 7:14 <b>occupation</b> 11:23	<b>occupy</b> 70:2,5 <b>occur</b> 166:16 <b>offering</b> 20:2 129:7 129:10 <b>offerings</b> 52:6 <b>offers</b> 130:7 <b>office</b> 15:18,21 42:10 147:3 <b>officers</b> 111:22 <b>offices</b> 1:20 15:15 15:16 102:18 <b>oh</b> 31:4 44:24 47:18 48:3 53:14 73:14 103:6 114:6 150:20 169:3 <b>OHC</b> 1:6 3:9 <b>okay</b> 8:16 9:7,25 10:4,14,21 12:21 13:17 14:17,22 15:3,8,11,17 16:16,20 17:14 18:9,21 19:15 20:4 21:11,22 22:12 24:20,24 25:4,6 26:4 27:19 28:14 32:8 33:11 33:24 34:19,22 37:9,15 39:18 42:8 43:18 44:10 44:13,16 45:4,22 46:23,25 47:20 48:18 49:2,19,24 50:6 51:5,9,21 53:12,22 54:2,6 55:5,11,13 56:3 56:10 57:10 58:9 59:2 60:3,11 61:4 61:16 64:18 65:7 67:24 68:22 71:20 77:10 79:7 80:19 80:23 83:8 85:23 86:5 87:19,22 88:24 89:8 90:4 91:2 92:8,22 94:6 96:13,20 97:18,22 98:3 100:3,9 102:9 103:21	104:3 105:11,19 106:3 107:8,16,24 108:6 110:11 111:2 112:15 113:7 114:22 115:2 118:7,10,22 119:10,24 120:16 121:4 122:12 123:22 124:12 126:3 127:24 128:21 129:16 130:5,11 131:7 132:24 138:8 139:21 140:6,11 141:7,19 142:9,15 144:8 145:15 150:13 152:6,19 152:24 153:3,4,5 153:7,8,13,14 155:5,16 159:17 161:17 162:4 <b>older</b> 150:2,15 <b>omission</b> 67:20 68:2 <b>once</b> 154:9 164:10 <b>ones</b> 46:11,16 <b>one-third</b> 25:17 <b>ongoing</b> 102:6 122:2 130:25 <b>onward</b> 37:2 <b>open</b> 62:21 102:18 147:4 <b>operate</b> 12:8 60:6,7 66:7 <b>operating</b> 5:23 61:3 64:20 65:9,15 66:8,14 71:22 110:7 160:19,20 <b>operational</b> 59:19 59:25 60:3,5,19 61:13 <b>operations</b> 59:4,12 59:20 60:12,16,22 62:5 63:8 90:21 <b>operator</b> 3:13 <b>opine</b> 42:21 <b>opining</b> 127:6	<b>opinion</b> 5:11,22 23:14,19,24 24:10 30:22 36:12,17 39:8 48:10 61:8 64:19 80:16 91:2 92:17 93:14,23 96:14 97:18 98:5 105:12,13 122:15 123:18 124:16 134:18 136:9,13 136:21 137:11 138:13 141:16 144:22 151:9 155:16,18 156:8 159:17 166:12 167:14 <b>opinions</b> 5:16 24:3 49:20 54:21 62:3 79:21 110:18 <b>opposed</b> 42:22 59:19 68:11 76:8 104:15 112:8 153:6 154:11 <b>opposite</b> 70:17 <b>optimistic</b> 98:8 <b>option</b> 113:9 125:2 158:3,7,17 159:2 159:9 <b>Orange</b> 19:16 20:3 <b>order</b> 68:5 82:21 144:19 164:11 <b>ordinarily</b> 159:8 <b>ordinary</b> 66:6 71:24 <b>organization</b> 12:5 33:21 114:18 <b>organizational</b> 54:16 <b>organized</b> 51:7 <b>original</b> 169:2 <b>originally</b> 150:4 <b>originate</b> 52:9 <b>originations</b> 100:25 101:22 102:4,17 102:21 <b>ought</b> 158:9 <b>outcome</b> 124:23	125:23 126:7,11 127:11,20 172:18 <b>outright</b> 148:16 <b>outset</b> 32:24 <b>outside</b> 121:25 125:6,7 <b>outsider</b> 34:13 <b>outstanding</b> 163:14 164:14 165:11 166:3,6 <b>overly</b> 98:7 <b>overstates</b> 102:10 <b>owe</b> 31:20 124:17 136:17 <b>owed</b> 5:2 27:3 28:24 29:17,18 30:10 31:6 35:8 37:2,20 91:3,23 124:3 136:14 137:14,16,21 <b>owes</b> 31:19 33:13 <b>owing</b> 29:4,20 <b>owned</b> 1:12 30:5 <b>owner</b> 75:15 82:25 <b>owners</b> 14:15 29:14 29:23,24 32:12 35:17 82:14 <b>o'clock</b> 146:12 <b>O'Driscoll</b> 52:18,21 53:7,13,20 54:7 84:8 103:14,19,24 115:3 143:12
---	---	---	--	---

**P**

**P** 2:2,2 4:6 95:4  
**packaging** 75:11,21  
**page** 4:24 6:8 26:25  
30:23,24,25 37:16  
54:21 57:10 62:3  
62:19 72:10 78:16  
79:20 80:23 86:6  
89:8 95:13 100:4  
101:9,11 102:24  
102:25 107:17  
109:7,21 110:12  
112:15,16 113:7  
118:11,11 119:24



128:21,23 131:19 142:10,12 171:5 <b>pages</b> 5:17 49:20 142:6 <b>paid</b> 12:22 24:20 24:22,23 25:7 26:8,10,19 55:10 56:11,12 66:9,16 69:22 70:9,13 75:17,18 <b>Pamela</b> 9:2 <b>paper</b> 55:20,22 76:5 77:22 84:23 86:22 87:4,5 88:12 <b>paragraph</b> 59:3 95:16 <b>paraphrase</b> 147:8 <b>part</b> 43:6 53:12,16 54:6,10 56:16 59:7 79:13 85:4 102:2 109:11 110:16 113:18 115:24 122:25 138:20 158:4,6 <b>participant</b> 9:3 <b>participants</b> 8:4 <b>participated</b> 8:13 <b>participating</b> 8:15 <b>particular</b> 30:3,15 34:19 36:8 46:14 50:20 62:14 69:8 69:15 75:19 91:17 123:24 132:10 138:18 165:16 166:23 <b>particularly</b> 11:7 80:14 97:7 106:5 106:11 113:21 114:23 <b>parties</b> 28:3 40:21 126:11 159:20 160:17 172:16 <b>partners</b> 13:12 <b>parts</b> 15:9 48:21 51:13 118:14 <b>party</b> 28:2,5 79:17	80:2 147:2 <b>pass</b> 75:14 <b>passes</b> 124:8 <b>pattern</b> 69:17 <b>Paul</b> 2:14 3:21 9:18 10:3,9,11,22 11:6 11:18 17:15,17,18 47:8,14,23 <b>pay</b> 13:6 82:11 108:11 109:3,5 <b>paying</b> 81:12 <b>payment</b> 13:4,17 13:22,23 81:7,9 125:25 <b>payments</b> 14:4 77:17 <b>pays</b> 13:8 <b>penny</b> 159:9 <b>people</b> 8:7,8,14,21 9:9,19,20,22 10:5 10:15 11:17,21 13:15 14:24 15:2 15:9 21:20,22 22:7 24:23 63:19 84:2 100:10 101:6 109:2 111:15,23 159:19 165:7 <b>percent</b> 152:9 <b>perfect</b> 67:12 145:9 <b>perform</b> 82:6,10,16 97:20 164:11 <b>performance</b> 84:11 105:14,20 160:6 <b>performed</b> 112:17 <b>period</b> 31:10 85:4,7 85:24 86:22 105:22 136:2,5 140:20 <b>perpetuating</b> 106:14,18 <b>persist</b> 154:8 <b>persisted</b> 126:15 <b>person</b> 7:2 8:3 63:16 69:21 77:14 82:4,8 <b>personally</b> 14:5 <b>personnel</b> 84:7	<b>perspective</b> 151:18 <b>pertain</b> 71:25 <b>Peter</b> 2:23 3:24 <b>Phil</b> 118:18 <b>phone</b> 21:8 <b>physical</b> 42:11 <b>Ph.D</b> 3:3 148:8 173:5,22 <b>picture</b> 149:16 <b>piece</b> 64:18 84:18 <b>pitch</b> 115:18,21 118:8 120:14 129:5,24 130:23 131:5,23 132:3,7 133:20,22 <b>itches</b> 116:5 131:25 151:4 <b>PJW</b> 1:4,7 3:11 <b>place</b> 3:16 90:16 125:11 148:18 <b>plaintiff</b> 1:6 2:4 4:3 12:25 <b>plaintiffs</b> 12:11 <b>plans</b> 59:17,17 84:3 <b>plants</b> 60:6 <b>play</b> 154:4 <b>played</b> 10:16 55:19 75:23 81:2 <b>playing</b> 155:6 <b>please</b> 3:19 4:5 125:16 141:21 <b>plus</b> 165:22 <b>pluses</b> 135:10 <b>point</b> 34:2 40:19 43:19 50:17 54:16 58:8,20,21 59:8 60:13 61:15 62:13 63:13,19 66:23 67:3,23,25 68:4 69:16 71:3 73:12 83:2,23,24 84:18 100:21 101:8 103:12 106:22 107:24,25 119:13 131:23 138:3 159:18 164:16 <b>pointed</b> 38:10	70:24 148:19 149:2 <b>pointing</b> 71:5 97:6 106:13 <b>points</b> 106:10 <b>policy</b> 135:25 136:24 137:6 <b>pool</b> 20:3 77:12 78:13 82:5 109:15 <b>poor</b> 105:20 <b>popular</b> 139:6,8 <b>portion</b> 25:12 26:16 <b>position</b> 80:2 118:25 120:8 160:18 <b>positions</b> 146:21 <b>positive</b> 23:19 <b>possession</b> 58:17 83:21 93:20 <b>possibility</b> 49:15 108:3 121:2 159:10 <b>possible</b> 88:7 92:19 119:22 <b>possibly</b> 8:20 22:3 90:20 102:14 123:4 <b>potential</b> 110:18 <b>practice</b> 101:18,23 <b>precarious</b> 59:15 <b>precise</b> 29:22 <b>predicament</b> 112:21 <b>preface</b> 62:8 <b>premarked</b> 3:4 <b>premiere</b> 52:11 <b>preparation</b> 76:10 134:13 140:12 <b>preparatory</b> 163:7 <b>prepare</b> 47:21,23 48:20,23 147:25 148:14,16 <b>prepared</b> 48:18 51:11 72:6 85:17 92:3 97:14 115:22 128:10 146:7	<b>preparing</b> 9:11 48:15 50:10,25 76:16 81:25 83:19 88:21 97:10,23 98:4 99:4 109:12 109:18 120:18 152:2 163:6 <b>PRESENT</b> 2:22 <b>presentation</b> 103:9 116:8,9,12 117:11 117:17 119:11 121:7 122:8,22 128:4,7,10,17 129:18 130:12 131:17 133:14,18 173:7,10,16 <b>presentations</b> 99:8 100:13,15 103:2 106:6,20 107:11 135:6 <b>presented</b> 115:12 115:15 128:11 <b>preserve</b> 123:9 <b>preserved</b> 17:22 <b>preserving</b> 68:10 <b>pressure</b> 132:14 <b>presumably</b> 16:12 65:13 161:6 <b>presume</b> 141:18 <b>pretty</b> 10:18 24:8 90:24 107:4 111:2 111:6 149:2 <b>previously</b> 83:16 95:5 <b>pre-insolvency</b> 33:12,25 <b>price</b> 71:8 <b>prices</b> 163:22 165:13 <b>pricing</b> 75:22 154:5 <b>primarily</b> 40:4 74:9 137:21 <b>principal</b> 9:19 11:12,17,23 18:17 52:15 72:24 84:21 146:11 <b>principals</b> 13:12
--	---	---	--	---

<b>principles</b> 62:12,14 62:16	<b>programs</b> 141:5	104:13 108:11	115:8 123:3	160:21
<b>prior</b> 16:21 41:16	<b>pronounce</b> 52:19	109:9 112:12	143:19 148:15	<b>Realtime</b> 172:8
42:10 53:9 59:4	<b>proposal</b> 132:18	152:8 166:6	162:2	<b>rearrange</b> 121:14
62:5 65:4 74:8	<b>proposed</b> 111:9,16	<b>puff</b> 147:10	<b>quo</b> 59:19	125:6
100:5 105:22	<b>prospect</b> 157:25	<b>pull</b> 112:21	<b>quote</b> 101:10,16	<b>rearranging</b>
116:4 126:5 140:2	<b>prospects</b> 139:13	<b>purchaser</b> 77:15,21	102:10,23,24	121:21
167:2	<b>prospectus</b> 81:25	78:11	<b>quoted</b> 102:2	<b>reason</b> 4:18 14:17
<b>private</b> 36:2 80:24	109:18	<b>purchases</b> 77:11,17	<b>R</b>	14:20,22 80:17
83:10 84:4,10	<b>prospectuses</b> 76:21	<b>purchasing</b> 89:11	R 1:22 2:2,14 4:6	85:23 108:15,20
109:10	80:12,13 109:12	<b>purely</b> 15:4	95:2,4 172:2,7,22	120:16 137:12
<b>probability</b> 157:24	<b>protect</b> 68:6	<b>purpose</b> 35:4 81:25	<b>radical</b> 122:24	138:23 158:15,20
<b>probably</b> 16:10	<b>prove</b> 68:20	95:19 111:24	<b>raise</b> 52:6	158:20,24,24
20:6 23:9 56:2	<b>provide</b> 11:6 12:12	144:15	<b>raised</b> 37:8	159:7 171:7,9,11
65:25 69:24 99:11	12:17 20:15 43:7	<b>purposes</b> 24:2 62:7	<b>ran</b> 55:25 69:9	171:13,15,17,19
108:22 116:20	53:16 59:21 75:2	105:15	<b>range</b> 101:3 107:5	171:21
117:24 141:2	78:3,5 86:18	<b>pursuant</b> 1:21	127:14,16	<b>reasonable</b> 5:18
155:13	93:16 105:8	105:4,15 134:12	<b>rate</b> 24:24,25 25:5	6:17,20,23 23:18
<b>problems</b> 57:21	110:22 114:18	<b>put</b> 27:9 55:13,24	25:23 83:6	33:5 41:21 44:8
<b>Proc</b> 1:7	115:24 144:17	56:7 57:5 71:7,13	<b>rates</b> 24:19 102:21	62:23 91:25
<b>proceed</b> 146:15	162:15	71:14 107:25	109:16 152:16	138:13 144:17,19
<b>proceeded</b> 121:8	<b>provided</b> 5:19	154:10	<b>ratify</b> 135:24	160:11
<b>proceeding</b> 94:4	50:21 52:14 53:3	<b>putting</b> 57:18 68:12	<b>raw</b> 161:2,5,18	<b>reasonably</b> 5:18
125:12	53:19 58:5 74:16	<b>p.m</b> 94:12 95:3	<b>Ray</b> 8:17 18:20	6:18 66:16 91:12
<b>proceedings</b> 125:17	77:25 78:6 89:19	169:5	21:9,24 149:21	92:18 93:25
146:4	104:9 106:9,10	<b>Q</b>	<b>reach</b> 33:7 167:17	138:13 160:11
<b>process</b> 4:15 50:24	109:13 161:14	<b>qualifications</b> 4:13	<b>reached</b> 49:21	<b>reasons</b> 36:16
135:19 154:12	165:15	<b>quality</b> 109:16	70:21 159:18	43:13 108:21
<b>produced</b> 45:5	<b>provider</b> 86:11	<b>quarter</b> 155:25	<b>read</b> 30:9 73:7	171:4
108:7	87:13,23	156:2,4	87:17 90:10 97:3	<b>recall</b> 7:2 8:17 9:4
<b>product</b> 20:10	<b>providing</b> 56:19	<b>quarterly</b> 109:6	115:9 160:14,16	11:14,14 18:16
114:8	93:9 106:17,18	166:8	170:5	19:13 20:12 21:7
<b>production</b> 102:18	112:25 114:16	<b>question</b> 8:25 14:2	<b>reader</b> 66:19 67:5,7	21:9 22:11,18
102:19	122:3 125:5 140:3	31:23 32:18 36:10	<b>ready</b> 87:7 105:9	23:16 24:17 28:12
<b>products</b> 114:7,11	143:2 162:5	37:8 44:20 61:9	133:24	37:23,24,24 42:7
<b>professional</b> 97:14	<b>proviso</b> 66:15	63:20,25 64:5,11	<b>real</b> 28:19 39:24	43:17,21 53:4
98:5 172:8	<b>prudent</b> 5:18 6:18	85:15 92:16	60:21 153:22	96:25 97:2,8,12
<b>professionals</b>	72:12 91:12 92:18	125:16 126:5	158:20	97:16 99:20
163:25 168:2	93:15 138:13	138:12 150:11,12	<b>realistic</b> 145:10	113:20 115:7,10
<b>professor</b> 4:12,22	160:11	151:5 158:10	<b>realities</b> 61:3	116:3 117:23,25
5:5 10:8,12 11:24	<b>public</b> 1:23 4:8	<b>questions</b> 146:13	<b>really</b> 13:12 21:7	131:21,22,25
91:2 93:23 122:15	46:4 52:6 57:13	146:19 163:3	22:18,20 23:16	149:7,8,20
134:18 136:9	80:24 83:10,22	168:11	29:20 30:15 39:7	<b>receipt</b> 149:12
142:2	84:17 95:6 107:18	<b>quick</b> 116:22	39:13 80:16 95:18	<b>receive</b> 45:10
<b>program</b> 100:25	108:7 164:4 165:4	<b>quickly</b> 25:24	113:12 121:12	<b>received</b> 44:25
101:22 102:4,7	169:11 172:9	<b>quite</b> 19:4 60:20	125:20 126:5	45:16 46:21 47:3
143:23	<b>publicly</b> 35:17,25	76:22 111:11	140:6 149:8	48:4 49:18 145:24
	57:23 62:24			146:6

<b>recess</b> 61:21 94:12 117:7 145:20	<b>refinance</b> 132:12	53:19 97:17 98:2	140:12 142:6	<b>response</b> 132:18
<b>recognize</b> 146:24	<b>refinancing</b> 132:14	104:12 149:22,24	146:2,11,14,20,22	147:12
<b>recollect</b> 22:6 24:6	<b>reflected</b> 155:13	151:16	147:24 148:2,7,10	<b>responsibility</b> 5:3
<b>recollection</b> 9:6	<b>reflects</b> 152:13	<b>remembered</b> 84:7	148:14,17 149:5	27:4,7,14,15 28:7
22:5,21 24:12	<b>refurbish</b> 82:21	<b>remote</b> 75:8 88:6	149:10 150:22	29:5,19,25 30:11
28:19 42:13 47:10	<b>refused</b> 96:15	89:23	152:3,7 163:8	37:3 39:20 40:19
48:16	134:21 161:10	<b>render</b> 137:11	167:10,13,24	62:11 159:19
<b>recommend</b> 130:21	<b>regard</b> 11:7 19:22	<b>renew</b> 89:9	168:7 173:5,22	<b>restructure</b> 90:21
<b>recommendation</b>	20:25 36:13 83:3	<b>reorganization</b>	<b>reporter</b> 4:5 168:24	125:5
62:22 63:2 120:20	106:5,11 126:4	96:11	172:8,8	<b>restructuring</b> 62:7
130:13	130:23 137:11	<b>repay</b> 76:3 77:22	<b>reports</b> 40:8 46:21	90:16 93:13 96:16
<b>recommendations</b>	145:14 151:5	<b>repayment</b> 77:16	98:16 110:12	103:9 105:3,15
59:17 135:11	<b>regarding</b> 6:15	78:14 82:6 88:12	<b>repossession</b>	113:23 115:6
<b>recommended</b>	112:19 131:23	152:15	109:15	118:13,18,24
120:19	146:25	<b>repeat</b> 125:16	<b>representative</b> 22:9	119:12,22 121:22
<b>recommending</b>	<b>regardless</b> 139:3	130:15 135:21	<b>represents</b> 15:12	125:10 126:21
5:24 64:21 71:23	<b>Registered</b> 172:7	<b>repeatedly</b> 156:10	25:13,14	129:8 136:25
<b>record</b> 3:20 16:13	<b>regular</b> 27:12	<b>replace</b> 90:9 162:11	<b>reputation</b> 51:18	<b>result</b> 67:18 119:10
18:9 60:13 61:19	101:7	<b>repo</b> 54:4 110:20	51:20,25 52:11	132:22 133:22
61:22 63:13 67:16	<b>regularly</b> 101:12	<b>report</b> 3:3 4:13,23	<b>request</b> 54:4 61:15	166:23
68:3 79:13 94:10	101:14 102:11	5:6 6:8 7:7,9,21	<b>requests</b> 40:14	<b>results</b> 109:6
95:8 103:3 106:22	<b>related</b> 10:19 19:9	9:11 11:8,12,16	174:6	<b>resume</b> 48:24
106:23 117:6,8	109:18 172:15	14:19,23,25 15:4	<b>require</b> 36:11 39:7	<b>resumed</b> 95:4
145:18,21,24	<b>relationship</b> 54:17	15:12,17 16:7,9	126:5	<b>retail</b> 78:13 142:18
160:16 168:16,16	56:24 57:2,6	16:17,21,22 17:3	<b>requirement</b>	142:22 143:9
168:19 169:4	60:20 84:15,21	17:6,9 18:10,15	162:14	<b>retain</b> 119:6 121:9
172:14	86:14,17 92:13	19:21,24 20:5,22	<b>research</b> 46:21	<b>retained</b> 12:11 21:5
<b>records</b> 22:22	109:22 114:15	26:24 28:8 30:17	50:25 79:24 80:5	22:13 43:5,15
103:21	142:25 143:11	32:24 36:22 37:16	108:2,2,18 140:12	44:10 100:7 105:2
<b>recovered</b> 153:10	<b>relationships</b> 51:12	40:7,13,13,15	140:13 163:22	105:8 119:11
<b>recovery</b> 152:20,25	54:22,24 55:2,3,6	41:6,15,17,23	<b>resell</b> 82:21	133:23
<b>reduce</b> 59:4 60:12	55:14 57:11 83:18	42:4,10,12,15	<b>reserve</b> 146:14	<b>retains</b> 158:25
62:4	<b>Relative</b> 93:2	44:19 45:23 48:21	147:14	<b>retention</b> 70:19
<b>redundant</b> 39:12	<b>relevance</b> 11:4	49:7,19 50:11,25	<b>residual</b> 32:6 68:7	134:12
123:23	<b>relevant</b> 31:10	51:12,17 52:15	<b>residuals</b> 75:19	<b>revenue</b> 36:5
<b>refer</b> 39:13 50:3	62:20 107:5	62:19 68:13 69:19	<b>respect</b> 5:19 14:4	<b>reverse</b> 54:4 110:20
95:16 117:18	<b>reliable</b> 164:7	72:9 74:14 76:11	21:2,2 40:18	<b>review</b> 44:17,23
142:18	<b>reliance</b> 166:11	76:17 77:2 83:19	46:14,15 52:13	58:4 76:16,17
<b>reference</b> 39:18	<b>relied</b> 45:24 47:25	85:5,12 86:6 92:3	55:19 59:11 65:7	97:10 99:3 150:22
106:5 142:9 144:4	48:6 76:15 79:22	92:12 93:2,8	74:9,13 76:18	<b>reviewed</b> 41:15
164:20	79:23 163:25	95:13 97:10,14,23	78:8 81:22 84:5	42:6 48:7 49:18
<b>references</b> 106:8	165:7	98:4 99:4 100:4	84:14 101:13	58:14 59:9 60:14
<b>referred</b> 74:14	<b>rely</b> 5:20,25 44:6	100:21 101:9	102:12 104:24	61:11 62:15 63:12
86:24 115:15	80:4 151:8	107:17,21 116:7	106:4,24 124:23	64:12,25 100:16
142:5	<b>remember</b> 7:4,11	117:18 119:22,24	125:18,24 142:24	103:22 120:17
<b>referring</b> 29:20	7:14,22 16:11	120:18 127:21	146:10,21 155:6	127:18 143:16
	19:23 30:20 35:24	128:20 131:18	<b>responded</b> 120:22	148:22



<b>reviewing</b> 44:12 97:12	144:21 147:21 148:2,13 150:24	<b>sale</b> 125:4 131:23 132:4 136:25	129:4 131:18 142:12	<b>seeking</b> 103:23
<b>revolving</b> 87:25	152:10,17,22	<b>Sandhu</b> 9:18 10:9	<b>secured</b> 76:9 88:4	<b>seen</b> 42:14 45:14
<b>Reza</b> 9:23 10:11 11:5	153:9,25 160:7,14	10:22 11:18 17:15	88:17 90:20	59:9 63:14 64:25
<b>Richard</b> 2:20 3:23	160:20,24 165:19	17:17,18,20 25:4	<b>securities</b> 2:24	65:5 67:15 89:14
<b>right</b> 4:16,18,22	166:9 167:9	47:8,14,17,23,24	29:24 30:18 31:2	103:3,25 107:9
11:20,25 12:23	<b>rights</b> 146:14	48:18,20 49:3	52:9 54:9 74:15	113:4,12 115:11
13:13 16:25 18:11	147:14,17	73:19 74:2	75:13,16,20 76:13	115:14 134:16
19:18 21:19 22:14	<b>rising</b> 98:19	<b>Santa</b> 10:9	76:19 77:3 78:9	145:12
26:2,3 29:11 30:2	<b>risk</b> 53:17 54:12	<b>Sarin</b> 8:22 9:14,17	78:19,21 82:2,5,9	<b>sees</b> 138:25
34:23 35:6,13,18	88:8 110:6,17,18	10:8,17 11:18	82:12 86:15 110:3	<b>self</b> 160:2
35:20,22 36:3	111:18,23,23	12:6 13:10,21	110:21 163:22	<b>self-dealing</b> 28:4
38:21 40:16 45:12	<b>riskiness</b> 20:2	17:3,9,20 47:19	<b>securitization</b> 55:7	<b>sell</b> 65:22 74:25
46:13,25 47:4	<b>risks</b> 109:24	73:18,25	55:16,20 74:10	75:4 82:2 87:6
48:5,11 49:2,2,8	<b>road</b> 153:24	<b>Sarin's</b> 13:22 14:10	75:24 77:21 78:12	114:7,11 115:5
49:11,22 52:13,23	<b>role</b> 10:15 53:24	25:2,3	81:3 87:8,9 89:2	142:20 161:11
54:20 55:17,23	55:19 72:15,25	<b>sat</b> 15:6	95:24 96:3,4	<b>selling</b> 65:12,22
57:14 58:18,19,24	73:21 74:9 75:23	<b>saw</b> 16:24 41:22	100:19 102:6,22	113:24 114:2,3,4
58:25 60:8 61:17	81:2 86:6,9 89:10	42:5 45:19 52:22	103:5 107:6,13	114:20 130:3
64:10,22 66:18	89:16 91:5,13	58:14 61:10 97:23	109:12,19 110:6	<b>send</b> 12:25 168:25
70:10 72:7,8,21	92:15 95:23 96:15	99:8,15 151:2	122:9,17 124:21	<b>sense</b> 29:19 36:17
74:12 77:12,20	99:13 100:5,11	<b>saying</b> 24:7 30:12	134:22 141:5,11	38:2,8,14,16 39:9
78:16,22,24 79:19	104:23,25 105:14	34:12 54:22 62:8	141:13 143:23	89:18 141:9
81:12,15,19 82:12	105:20,21 110:15	78:18 108:13,18	162:5,14	<b>sent</b> 26:9 148:21
82:19 86:7 88:9	154:4 155:6	119:4 121:25	<b>securitizations</b>	<b>sentence</b> 30:9,12
88:13 89:15,16,24	<b>roles</b> 72:20 97:20	123:6 143:7 147:9	35:5 57:4,19	39:10
91:15 92:6 94:8	<b>Roman</b> 6:8 26:25	154:17 156:13	74:19,20 78:22	<b>separate</b> 29:18
95:20 96:17 100:7	36:23 79:20	161:20	80:16 104:15	111:25
101:14 102:23	<b>roughly</b> 55:13,24	<b>says</b> 30:13 45:24	106:11 112:18	<b>separately</b> 100:14
103:11 104:6,10	<b>RPR</b> 1:22 172:22	62:21 71:17 98:10	122:3 123:2	103:3
105:5,25 106:12	<b>rule</b> 63:5 142:11	101:17 118:22	130:25 155:7	<b>September</b> 1:16
107:25 108:4,7	143:4,8,10,13	128:12 130:18	161:13	3:12 41:3 85:21
109:7,19 110:9	144:13	132:18 147:6	<b>securitize</b> 55:21	92:5,23 93:10
112:5 113:16	<b>rules</b> 142:16,21	<b>Scott</b> 8:18 149:20	75:8 86:22	150:8,9 166:13,21
114:5,9 115:16	<b>run</b> 32:11 36:7,8	<b>se</b> 144:16	<b>securitized</b> 84:24	167:16 172:20
116:2,6,25 118:15	70:16 154:10	<b>search</b> 20:15	109:14	<b>sequence</b> 115:8
118:20 119:8,17	165:2	<b>SEC</b> 19:19,22 20:6	<b>security</b> 38:3,20	<b>serious</b> 90:16 127:5
119:19,23 120:15	<b>running</b> 141:5	<b>second</b> 5:22 6:15	<b>see</b> 4:12 12:9 17:3	130:22
121:15 123:20	<b>runs</b> 34:14	8:23 64:18 75:18	42:3 60:25 63:2	<b>serve</b> 78:18
124:9,10 125:12	<b>R-e-z-a</b> 9:23	156:2	64:12 68:3 89:5	<b>served</b> 18:22 83:14
126:22 127:9	<b>S</b>	<b>secret</b> 154:25 155:5	100:16 103:21	<b>serves</b> 41:24
128:2,13,17,20,25	<b>S</b> 2:2 4:6 13:20,21	<b>section</b> 39:11 72:9	106:21 111:17	<b>service</b> 114:16
129:23 130:2,22	13:22,24,25 14:6	72:9,13,25 78:17	112:6 116:18	<b>services</b> 5:19 11:7
131:4 132:2,7,21	14:7 15:14 95:2,2	80:23 83:8,9	127:10 135:24	12:12,17,22 14:5
133:20 134:9,17	95:2,4	95:13,22 100:3	136:7,24 140:13	24:16 50:22 52:14
137:23 142:22	<b>Saagar</b> 14:12	104:25 107:16,20	143:16 162:9	53:3,16,19 57:4
		109:8,21 110:11	166:16 168:6	113:22 114:18
				115:25 143:2

<b>servicing</b> 100:25 101:23 102:5	117:1 118:1 119:1 120:1 121:1 122:1	<b>shows</b> 60:14 106:23 135:7	102:12 <b>Solutions</b> 3:14	7:16 16:11 25:13 36:13 37:12 40:14
<b>serving</b> 79:8 105:23 105:23	123:1 124:1 125:1 126:1 127:1 128:1	<b>shut</b> 90:22 141:12	<b>solvency</b> 38:4 41:12 43:10,21,24,25	51:15,22 52:8 58:8 61:15 64:17
<b>set</b> 95:19 163:9 172:12,19	129:1 130:1 131:1 132:1 133:1 134:1	<b>side</b> 60:21,22 108:3	92:4 150:17 151:3 166:18	89:22 113:22 135:2 140:25
<b>sets</b> 80:2	135:1 136:1 137:1 138:1 139:1 140:1	<b>sign</b> 168:25	<b>solvent</b> 26:22 32:5 38:5,13 85:6,9	<b>specifics</b> 107:7
<b>setting</b> 79:17 111:24	141:1 142:1 143:1 144:1 145:1 146:1	<b>signature</b> 169:2 170:15	155:24 156:8 157:20	<b>speculating</b> 127:2
<b>Shapiro</b> 1:19 3:1,3 3:8 4:1,12 6:1 7:1	146:8,13 147:1,23 148:1,8 149:1	<b>signed</b> 170:9	<b>somebody</b> 6:19 7:3 21:25 23:7,19	<b>speculation</b> 42:24 45:8 64:6 85:2
8:1 9:1 10:1 11:1 12:1 13:1 14:1,9	150:1 151:1 152:1 153:1 154:1 155:1	<b>significance</b> 160:12	24:3,10 47:8 107:11 115:22	<b>speculative</b> 127:4
15:1 16:1 17:1 18:1 19:1 20:1	156:1 157:1 158:1 159:1 160:1 161:1	<b>significant</b> 101:13 101:21 102:13,15	128:11 149:9,19 162:12,17	<b>spell</b> 9:15
21:1 22:1 23:1 24:1 25:1 26:1	162:1 163:1,3,6 164:1 165:1 166:1	<b>significantly</b> 124:20	<b>sorry</b> 17:18 48:25 53:14 69:7 78:6	<b>spelled</b> 9:16
27:1 28:1 29:1 30:1 31:1 32:1	167:1 168:1 169:1 169:7 172:11	<b>signing</b> 168:21	85:5,14 113:25 115:13 126:4	<b>spend</b> 70:25
33:1 34:1 35:1 36:1 37:1 38:1	173:5,22 174:3	<b>Silk</b> 2:18	130:15 133:5 156:22 157:10	<b>spends</b> 10:25
39:1 40:1 41:1 42:1,16 43:1 44:1	<b>Shapiro's</b> 145:25	<b>similar</b> 140:14 147:11	158:5 <b>sort</b> 29:8 38:20	<b>spent</b> 25:21 44:14
45:1 46:1 47:1 48:1 49:1 50:1	<b>share</b> 16:20 163:12 163:18	<b>similarly</b> 66:12 71:12 113:7	88:25 <b>sounds</b> 26:3	<b>splitting</b> 43:13
51:1 52:1 53:1 54:1 55:1 56:1	<b>shared</b> 144:10	<b>simply</b> 30:9 71:15 139:17 150:5	<b>Soup</b> 163:9 167:12	<b>ss</b> 172:4
57:1 58:1 59:1 60:1 61:1 62:1	<b>shareholders</b> 29:21 29:25 32:6 33:20	<b>sincerely</b> 69:25	<b>source</b> 72:24 76:11 78:14 79:3 88:12	<b>stakeholders</b> 32:11 33:21,23 34:6
63:1 64:1 65:1 66:1 67:1 68:1	38:6,18 137:22 154:12	<b>single</b> 75:14	163:16,20,24 164:3,24	<b>stance</b> 91:21
69:1 70:1 71:1 72:1 73:1 74:1	<b>shares</b> 163:14 164:14	<b>sinister</b> 110:10 114:23	<b>sources</b> 73:4,15	<b>stand</b> 5:16 6:11
75:1 76:1 77:1 78:1 79:1 80:1	<b>sheet</b> 103:10 156:5 170:9	<b>sit</b> 53:2	<b>Southern</b> 11:24	<b>standalone</b> 15:25
81:1 82:1 83:1 84:1 85:1 86:1	<b>Shen</b> 10:2,10 11:11 13:8	<b>site</b> 165:2,4,6	<b>SPE</b> 35:3	<b>standard</b> 89:25 111:7,12
87:1 88:1 89:1 90:1 91:1 92:1	<b>shift</b> 38:4,9,15,16 38:19 40:18,23	<b>sits</b> 40:11	<b>speak</b> 37:7 39:4	<b>standards</b> 123:3
93:1 94:1 95:1,12 96:1 97:1 98:1	<b>shipments</b> 47:19	<b>sitting</b> 23:17 24:7 25:15 47:5 61:14	<b>speaking</b> 27:22 32:3	<b>Standish</b> 144:3
99:1 100:1 101:1 102:1 103:1 104:1	<b>shipped</b> 44:24 45:2	80:10 99:20 131:22	<b>special</b> 35:4 95:19	<b>standpoint</b> 5:15 27:22 38:24 71:3
105:1 106:1 107:1 108:1 109:1 110:1	<b>shoes</b> 86:10 87:11 90:6 91:4	<b>situation</b> 33:12,25 59:15 60:19	<b>specialist</b> 103:14	83:7 84:10 124:6 135:9 143:4
111:1 112:1 113:1 114:1 115:1 116:1	<b>short</b> 145:15	122:21 135:4 143:17,21 144:5	<b>specialize</b> 93:21	<b>stands</b> 52:22
	<b>show</b> 23:6 112:6 133:2	<b>situations</b> 119:6 140:15	<b>specific</b> 5:16 7:2 28:19 33:22 37:11	<b>Stars</b> 2:6
	<b>showed</b> 115:10 165:17	<b>skeptical</b> 111:15	58:21,22 76:14 80:14 83:23 84:14	<b>start</b> 72:10
	<b>showing</b> 118:14	<b>skepticism</b> 111:18	84:18 101:8 106:8 127:12	<b>started</b> 9:7 31:2 44:3 55:25 56:14
		<b>skills</b> 98:6	<b>specifically</b> 5:20,25	116:3 149:12 154:10
		<b>smaller</b> 123:5 130:7		<b>starting</b> 78:10 100:4 110:11
		<b>sold</b> 66:9 90:18		140:9 142:12 144:12
		<b>sole</b> 74:18		<b>starts</b> 158:2
		<b>solicit</b> 101:25		<b>State</b> 1:23 172:3,9
		<b>solicited</b> 101:12		<b>statement</b> 162:10
				<b>STATES</b> 1:2
				<b>status</b> 59:19



stay 121:12 136:23 137:5	subset 46:19,20	66:6,9 161:9	40:7 62:10 75:3	16:8 19:12 22:17
step 86:10 91:12	subsets 36:8	suppliers 161:5,15	94:7 95:23 96:2	30:25 32:14,17,25
96:15 161:15	subsidiaries 1:13	161:18	102:16 116:22	33:17 35:9 36:12
163:12 164:11,17	subsidiary 1:12	supply 65:25 66:3	117:2 128:3	47:6 50:3,9 57:7
165:9,19,25	75:4,5	supplying 161:6	132:14 139:9	58:2,4 63:18 64:9
Stephan 8:17 18:20	substance 27:10	support 166:17	145:15 150:5	69:12,23 74:22
stepped 87:10	substantial 19:5	supported 165:15	151:17	76:6,14 83:13
89:19 90:6 92:18	42:17 98:18	167:6	taken 45:11 61:21	91:7 96:20 105:12
162:7,13,18	126:16	suppose 82:17	101:14 102:13	127:19 142:4
stepping 91:3	substantially 123:3	supposed 64:10	117:7 120:14	147:8 149:25
steps 167:20	substantiate 62:24	supposition 151:11	125:11 145:20	152:6 153:15
Steve 149:21,21	substantive 100:23	sure 8:10,24 10:7	167:20	156:14,22
stipulation 168:21	101:19	10:17 29:3 52:18	takes 40:9	ten 20:12
stocks 142:19 154:5	substitute 136:10	54:15 60:2,4	talk 17:11 18:13	tend 109:2 111:14
stop 85:9,13 159:21	138:14	61:18 84:3 85:16	21:21 22:8 24:14	Tennenbaum
160:19 161:18	successive 18:10	90:23 94:9 107:6	28:12 29:4,23	42:21 43:10,15,20
stopped 162:5	suffering 98:17	113:23 117:4	31:9 32:9 36:15	44:4 166:20
stopping 161:12	suggest 62:16 97:24	119:6 123:25	39:2 49:24 50:2	167:20
stores 60:7	suggested 113:8	145:17 149:15	54:23 62:20 84:2	Tennenbaum's
strategy 123:7	146:16 167:11	155:20 162:8	99:12 100:4,10,14	41:6,15,20,23
Street 2:18 3:15	suggesting 68:12	166:22	101:7 103:2,18	42:3 85:21 150:6
strengthen 6:13,14	141:13 143:10	surprise 89:5	105:19 110:12	150:18,21 151:8
151:9	suggestions 130:6	surrounding	113:16 130:14,17	151:19 166:12
strengthens 6:10	suggests 40:20	109:24	talked 23:17 24:7	167:8,10,13 168:7
6:22 33:4	59:10 67:16	survival 83:4,7	28:20 37:6,11	tension 111:21
stretch 132:13	132:12	suspicious 68:14	41:16 51:9 87:20	ten-minute 61:17
strike 95:14	Suisse 1:7,8,10,10	swaps 125:8	100:20 104:8,15	ten-year 152:8
structure 89:2	1:12 2:24 3:10,25	swear 4:5	108:3 116:4 152:3	term 27:12,13
90:11	19:8,8,21 23:14	swing 57:8	talking 22:19 35:6	28:10 29:8 55:17
structured 88:2	31:7 50:5,12,17	Swiss 1:8 50:13	43:4,5 105:21	86:25 87:3
structures 110:4	59:11 79:10 90:6	switches 34:13	110:3 129:8	terminology 28:21
structuring 106:24	92:12 141:23	sworn 4:7 95:5	147:24	terms 27:18,20
studies 167:16	173:19	169:8 171:23	talks 40:4	66:2 70:19 82:6
study 135:5	Suisse's 5:12 24:4	172:13	tape 61:24 117:6,9	95:17 156:20
stuffed 20:21	suited 118:23	synonymous 27:18	168:19	161:7 167:14
Stutman 2:5 4:3	sum 134:18 159:12	27:19	taxes 39:6	test 166:16
7:3 9:2,10 16:21	summaries 49:25	system 17:23	team 110:17 111:9	testified 4:8 95:6
18:13,14,18,23	summarize 49:20	S-a-a-g-a-r 14:12	111:19	100:22 101:12
23:10 26:18 45:3	summary 54:20	S-a-n-d-h-u 9:18	technical 55:17	102:11
45:20 46:18 47:7	62:2 64:19	S-a-r-i-n 9:17	75:25	testimony 4:20
47:12,16 149:19	supplemental 11:8	S-h-e-n 10:2	technically 76:7	43:8 53:9 100:10
Stutman's 42:9	11:16 85:12 93:2		89:15	101:10 107:4,4,9
subject 39:19 52:15	145:25 146:20		techniques 145:7	170:6,8 172:14
142:16	148:2,7,10,14,16		telephonic 7:17	Thank 162:23,25
Subscribed 169:8	152:2,7 163:8		telephonically 8:2	168:13,14
171:23	173:21		tell 4:24 5:5 8:6,7	thanks 128:12
	supplier 65:11,20		9:7,13 10:14 15:4	130:19 132:19

## T

T 95:2 172:2,2

tab 141:20

tacit 122:4

take 6:18 20:18

<b>theory</b> 158:15	152:13 157:10	146:17	<b>trying</b> 8:19 22:3	16:6 27:16,21
<b>thereabouts</b> 149:14	160:3	<b>top</b> 102:25 113:7	30:17 63:23 67:25	29:16 34:11 35:7
<b>thing</b> 65:16,20	<b>three</b> 11:10 22:7	118:17	98:21 115:5 133:8	37:17 48:12 53:24
90:24 92:2,3	50:21 100:13	<b>total</b> 25:6,9 26:15	158:12	57:19 61:4,8 67:6
125:22 135:22	107:11 149:14,23	<b>totally</b> 160:13	<b>turn</b> 12:16 13:14	67:7 75:25 79:7
150:14 154:2,3	165:16	<b>trade</b> 35:20 65:22	56:25 57:3 62:19	105:11,13 106:3
<b>things</b> 11:14 45:23	<b>tie</b> 162:16	66:6 161:7,19	75:5 112:20	143:17,20 144:5,6
60:6 68:5 70:2,5	<b>till</b> 126:18	<b>traded</b> 35:17,25	159:10	152:12 158:11,12
71:6 91:15 114:14	<b>time</b> 3:12 11:2	104:13 108:11	<b>turned</b> 23:20	158:13,14 168:8
126:23 127:21	17:10 18:25 24:18	152:8	126:23 140:8	<b>understanding</b>
130:8 133:9 134:3	24:22,23 25:14,18	<b>trade-offs</b> 136:23	<b>TV</b> 168:15	32:8,17 33:11,25
136:3,7 152:6,16	31:7,10 42:14	<b>trading</b> 152:9	<b>Twelfth</b> 2:6	35:7,10 36:12
<b>think</b> 5:15 6:3,11	44:14 45:10 51:6	153:7 157:6	<b>two</b> 8:20 14:14	37:10 41:9 43:14
6:18,20 8:12,14	56:7 59:10 65:4	165:17	27:22 47:18 72:23	49:16 50:4 51:12
8:19,19 18:12,19	70:6,14,15 71:8	<b>tranche</b> 75:14,17	73:12 74:3,4	51:23,24 52:25
20:6 21:8,23,24	71:14 74:8,17	75:18	76:20 97:3 112:7	54:14 56:17 60:18
22:19 23:8 29:12	84:20 85:4,6,17	<b>tranches</b> 75:17	149:13,23 153:23	74:7 75:23 76:12
29:22 31:4,21	85:24 86:19,21	<b>transaction</b> 76:17	159:9 162:9	79:12,16 83:17
32:3 33:3,6 35:3	90:21 92:2 93:7	89:6 103:17 132:5	165:20	85:18 88:3 90:5,8
36:16 39:7 40:16	94:7 95:3 96:8	<b>transactions</b> 74:23	<b>two-thirds</b> 25:19	90:12 99:5,17
42:11 45:22 46:20	97:13 100:6	74:23 77:5 81:3	<b>type</b> 16:19 58:20	110:14 113:18
47:5,10 52:23	112:13 119:16	106:25 111:16	76:8 79:22 80:3	124:2 125:14,20
53:5 54:4,12,15	120:24 122:23,24	112:24 143:8	83:15 89:3 90:20	143:5
55:12,25 56:8,14	123:18 132:25	<b>transcription</b> 170:7	93:12 96:16	<b>understood</b> 23:12
58:19,20,25 59:13	135:17 136:6	<b>translate</b> 27:9,25	112:19 125:10	23:25 98:9
60:17,23 66:10	138:4 140:20	28:16 29:12,13	126:21 135:13	<b>undertake</b> 99:10
67:19 68:18,21,23	153:20 164:8,16	<b>transpire</b> 125:21	136:24,24 162:16	<b>undertaking</b> 127:7
85:23 87:20 89:14	166:24 167:13	<b>treat</b> 27:18	167:25	<b>undertook</b> 167:17
94:6 95:15 96:13	168:21 169:5	<b>Treister</b> 2:5 4:3	<b>types</b> 39:2 50:21	167:25
98:7,9,14,19	<b>times</b> 17:12 40:12	<b>Trident</b> 12:7,10,16	75:12	<b>underwriter</b> 78:19
105:22 108:15	55:13 164:13	12:18 13:2,6,18	<b>typical</b> 114:13	104:18
113:20 122:6	165:10 166:19	14:15 15:14	<b>typically</b> 40:11	<b>underwriting</b>
123:10,16 126:15	<b>timing</b> 56:12 146:6	<b>tried</b> 25:24 27:9	65:22 75:16 79:23	30:18 31:2 72:16
126:17,18 133:3	<b>today</b> 3:13 4:18	28:15,16 44:18	80:4	<b>unfamiliar</b> 77:7
133:10 134:10	26:8 53:2 100:20	<b>tries</b> 114:10		<b>unfortunate</b> 149:25
135:12,15,22	126:23 145:3	<b>trouble</b> 98:9	<b>U</b>	<b>unique</b> 72:14
137:3 139:4,10,16	146:8 153:23	<b>true</b> 17:2 69:19	<b>Uh-huh</b> 22:2	141:18
139:16,24 140:7	156:10	70:18,25 108:25	<b>ultimate</b> 124:23	<b>uniquely</b> 118:22
143:3,21,25 144:2	<b>Today's</b> 3:11	170:6 172:13	134:13 152:20,25	<b>unit</b> 111:25
144:3,9,14,24	<b>told</b> 22:21 27:6,8	<b>truly</b> 150:3	<b>ultimately</b> 33:19	<b>UNITED</b> 1:2
145:2 146:7 147:8	43:9,24 48:3	<b>trust</b> 1:6 3:9 26:21	102:20 132:4	<b>units</b> 60:7
152:19 155:10,12	64:14 67:17 78:10	57:2 79:10 89:12	<b>unable</b> 147:4 168:7	<b>University</b> 10:9,13
158:11 161:23	96:14 123:16	<b>truthful</b> 62:21	<b>uncertain</b> 120:5	11:24 163:23
162:3,12	134:10 148:18	67:17	<b>underlies</b> 122:7	<b>unlimited</b> 158:22
<b>thinking</b> 84:9	160:3	<b>try</b> 80:18 88:7	<b>underlying</b> 81:6,22	<b>unpaid</b> 26:16 39:6
<b>third</b> 40:21 159:20	<b>tomorrow</b> 136:3	114:14,16 115:23	88:12	55:10 56:11,16,20
<b>thought</b> 69:23	<b>Tony</b> 2:8 4:2 94:6	127:10	<b>understand</b> 6:5	57:6

<b>unreasonable</b> 91:11 92:17,25 93:6,9,15,24 <b>unreasonably</b> 93:15,24 <b>unrelated</b> 100:19 103:5 107:13 <b>unsecured</b> 65:23 <b>unspecified</b> 126:24 <b>untruth</b> 67:22 <b>upcoming</b> 132:15 <b>USA</b> 2:24 <b>use</b> 29:8 115:5 167:7,7 <b>uses</b> 71:13,14 <b>usual</b> 90:25 91:10 98:22 121:17 123:10 135:23 168:20 <b>U.S.A</b> 1:11	145:7 <b>various</b> 7:16 9:20 10:22 11:3 34:25 35:15 41:21 46:21 52:23 54:22,24,25 57:11 79:18 84:2 90:22 99:8,9 100:10 101:7 135:5 151:4 166:8 <b>vehicle</b> 95:19 <b>verify</b> 80:18 <b>versus</b> 3:10 136:24 <b>video</b> 3:13,16 <b>Videographer</b> 2:25 3:6 4:4 61:19,22 94:10 95:8 117:5 117:8 145:18,21 168:18 <b>videotape</b> 3:7 <b>view</b> 33:17 34:2 54:16 111:3 126:10 130:12,21 138:3 157:6 <b>views</b> 111:15 <b>VII</b> 72:9 83:8 <b>VII.A</b> 80:23 83:9 <b>VII.A.1</b> 72:13,25 83:10 <b>VII.A.2</b> 83:13 <b>VII.A.2.a</b> 78:17 <b>VII.A.2.b</b> 95:13 <b>VII.A.2.c</b> 100:3 <b>VII.A.2.d</b> 104:25 <b>VII.A.3</b> 107:16 109:8 <b>VII.B</b> 110:11 <b>VII.B.2</b> 109:21 <b>VII.D.1.b</b> 128:20 <b>VII.D.1.c</b> 131:18 <b>Villanova</b> 10:12 <b>violate</b> 137:13 <b>virtually</b> 165:18 <b>visit</b> 84:2 <b>vis-a-vis</b> 67:10 <b>vs</b> 1:7 <b>V.A</b> 6:8 27:2 36:23 39:11	<b>V.B</b> 41:5  <b>W</b> <b>wait</b> 23:23 135:24 136:6,24 <b>waive</b> 146:21 <b>waives</b> 147:17 <b>want</b> 6:18 23:19 24:10 26:25 35:7 58:2,4 60:4 61:5,8 61:10 66:19 67:7 85:13,14 105:12 123:17 124:5 131:21 142:4 145:24 146:10,18 150:20 <b>wanted</b> 23:13 44:7 87:15 137:5 139:4 166:20,24 <b>wants</b> 92:15 <b>warehouse</b> 55:9 56:4 74:8 86:11 86:13,23,24 87:14 87:24 88:22,24 89:10,12,20 90:2 91:5,16 92:15,20 93:9 95:20 104:9 106:12,25 107:13 122:3,8,17 123:4 123:5 124:22 131:2 134:22 143:23 155:7 162:5,15 <b>warehousing</b> 87:4 <b>wasn't</b> 24:4 29:22 148:15,16 150:18 154:24 155:5 166:22,25 <b>way</b> 6:12,22 40:23 44:21 45:9,17 63:7 66:8,25 68:19,20 69:2,3,6 69:10 71:10 80:8 83:8 84:13 88:2 88:10 89:25 132:12 141:13 148:18 160:19	172:17 <b>ways</b> 38:11 124:21 124:22 152:3 <b>Web</b> 74:4 165:2,3,6 <b>week</b> 18:5,6 145:25 <b>went</b> 56:8 110:22 149:10 150:23 156:7 167:2 <b>weren't</b> 115:18 129:20 141:5 <b>West</b> 3:15 <b>we'll</b> 9:9 20:18 50:23 100:14 103:2 121:17,19 121:20 122:2 128:4 131:8 135:15 <b>we're</b> 26:22 35:6 59:24 60:4 74:12 92:8 99:12 124:21 128:12 130:19 <b>we've</b> 4:23 36:20 49:4 86:15 89:3 89:14 100:20 108:21 110:3 131:15 133:17 139:10,16,16 140:7 142:2 146:2 146:5,15 147:24 <b>WHEREOF</b> 172:19 <b>Whitman</b> 8:17 22:3 <b>wholly</b> 1:11 <b>Wickes</b> 2:14 3:21 3:21 4:11 20:14 31:25 42:25 53:11 61:16,25 64:8 94:6 95:11 116:17 116:24 117:2,14 128:3 131:8 133:5 133:8 141:19 145:15,23 147:7 147:19,21,22 148:4 160:14 162:23 168:12 174:4,7 <b>wide</b> 101:3 107:5	<b>Williamson</b> 2:15 3:23 168:24 <b>willing</b> 161:15 <b>wish</b> 69:25 164:4 171:3 <b>witness</b> 4:5,7 12:4 18:22 20:9 26:23 42:18 95:5 116:22 116:25 131:14 142:7 162:25 168:14 171:2 172:11,14,19 174:2 <b>witness's</b> 63:22 <b>word</b> 18:11 44:6 <b>words</b> 28:17 44:6 50:19 56:23 57:23 59:20 67:21 69:9 75:9 87:24 102:17 114:10 121:13 126:7 153:22 162:15 166:25 <b>work</b> 7:8 10:6,16 10:20,25 12:3 15:17 20:9,9,25 21:3 23:14 24:4 24:20 25:10,10 42:17 43:13,15 44:3,11 49:21 51:17 52:5 66:17 77:5 97:9,23 98:4 103:9 127:18 134:11 145:13 163:7 <b>worked</b> 9:11 11:17 11:20 14:24 17:12 19:6,19 31:7 53:13 54:7,11 73:6,9 76:13 83:18 113:19 <b>working</b> 7:21 15:20 18:22,25 20:23 43:10,20 71:12 72:2 150:12 <b>works</b> 10:18,22 34:7 83:8 <b>world</b> 52:12 108:25
---	--	--	---	--

114:13 140:7 <b>wouldn't</b> 6:15 23:4 23:19 41:14 44:5 102:3 103:17 111:13 113:11 114:12 127:4,13 141:15 145:5 161:13 162:7 <b>write</b> 7:19 15:8,9 149:5 <b>writing</b> 7:6 <b>written</b> 30:13 60:20 73:3,7 98:16 105:4,25 110:13 118:4 <b>wrong</b> 91:14 105:12 123:17 <b>wrote</b> 11:8 14:25 15:3,6,10 19:21 39:11 78:20 93:7 149:10	<hr/> <b>Z</b> <hr/> zero 158:16,21,23 159:4 <hr/> <b>\$</b> <hr/> \$400 25:5 \$600 25:3 \$7.5 78:20 \$75 110:20 \$800 24:25 \$984,000 25:8 26:13 <hr/> <b>0</b> <hr/> 01 56:8 92:23 93:10 93:11 126:18 150:10 02 56:9,15 126:18 02-13396 1:4 3:11 <hr/> <b>1</b> <hr/> 1 1:13 3:7 118:11 118:25 1st 92:22 1:34 95:3,9 10:15 1:17 3:12 100 1:14 10105 2:13 11 1:3 133:24 134:3 134:7 11:39 61:20 11:55 61:23 117 173:6 12 72:10 80:23 12:44 94:11,12 128 173:9 13th 79:6 131 173:12 133 173:15 1345 1:20 2:12 3:17 14 78:16 142 173:18 148 173:20 15 20:12 16 86:6 89:8 95:14 163 174:5 17 30:23,24,25	95:13,14 100:4 17th 172:20 18 101:9 102:24 19 102:25 105:2 141:20 19th 105:3,16 133:19 1901 2:6 1980s 52:10 1994 31:4 55:25 78:2,10,19 92:13 <hr/> <b>2</b> <hr/> 2 61:24 117:6 130:3 2:10 117:6 2:18 117:9 20 174:7 2000 31:10 35:12 37:2 51:6 57:9 110:13 155:18,25 156:2,7 2001 35:12 41:4 70:6 78:2 85:22 86:5 90:5 91:5,13 92:6,9,19 99:19 99:23 104:4 106:7 106:7,21 115:4 116:7,9,20 117:19 122:16 124:19 126:13 127:2 139:23 140:9 144:12 150:9 152:7 153:7,17,21 155:2 160:18 165:16 166:13,19 166:21 167:5,16 2002 51:6 56:14 59:6 62:7 100:6 105:3,16,22 106:7 106:21 131:12 132:25 133:19 134:7,12 139:23 139:25 152:8 155:3 165:16 173:14 2004 79:6 132:11 165:13	2007 1:16 3:12 4:23 16:7 41:10 148:11 153:17,21 169:9 171:24 172:20 2009 132:13 164:25 22 107:17 23 109:7 24 110:12 25 3:15 78:21 26 109:21 26th 116:7,9,20 117:18 121:7 122:8,16 124:19 127:21 27 62:19 142:6 28 112:15 142:6,10 28th 148:11 29 113:7 <hr/> <b>3</b> <hr/> 3 5:17 49:20 54:21 57:10 62:3 79:20 117:9 146:12 168:19 173:4 3:04 145:19 3:13 145:22 3:42 168:19 3:43 169:5 30 119:24 30th 4:23 16:7,22 41:10,25 155:18 156:6,7 167:5 31 128:23 32 131:19 36 72:17 38 72:18 <hr/> <b>4</b> <hr/> 4 4:24 5:17 6:8 26:25 37:16 49:20 133:20 174:4 4/30/07 3:4 173:5 40 152:9 153:6,10 400 25:25 45 46:15 153:3,11 153:12,23 45th 3:15	<hr/> <b>5</b> <hr/> 5 1:16 142:12 5th 3:12 50 153:3,11,12 501 3:2 4:24 11:18 15:5 20:23 41:11 41:25 54:21 57:11 62:3 85:17 147:25 173:4 502 117:10,16 173:6 503 128:5,6,19 129:5 173:9 504 131:9,10,16 132:6,22 173:12 505 133:10,11,12 133:18 173:15 506 141:21,22 142:3 173:18 507 148:5,6 173:20 52956 118:12 53089 142:13 <hr/> <b>6</b> <hr/> 6/26/01 117:12 173:8 6/30/2000 155:22 <hr/> <b>8</b> <hr/> 8HQ 2:19 8/19/02 133:15 173:17 8/28/07 148:8 173:22 8/9/01 128:8 173:11 <hr/> <b>9</b> <hr/> 9 46:15 90067-6013 2:7
---	--	---	--	--